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FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:30 a.m. October 26, 2010

First Floor Board Room
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Approve the minutes of the regular meeting on October 19, 2010

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. CONSENT PLANNING AGENDA (ITEMS 1 THROUGH 4)

1. *ZON2009-00027-Associated with CUP2009-00026 – Extension of time to complete the platting requirement for a zone change from SF-5 Single-Family Residential (“SF-5”) to LC Limited Commercial (“LC”), and creation of DP-321 Harry and Webb Commercial Community Unit Plan; generally located southeast of Harry Street and Webb Road. (District II)

RECOMMENDED ACTION: Approve a one-year extension of time to complete platting by October 26, 2011.

2. *SUB2010-00041 -- Plat of Harry and Webb Commercial Addition located on the south side of Harry and on the east side of Webb Road. (District II)

RECOMMENDED ACTION: Approve the documents and plat, place the Ordinance on first reading, and authorize the necessary signatures.

3. *SUB2010-00046 -- Plat of Madeline Langerot Addition located north of Douglas, east of West Street. (District VI)

RECOMMENDED ACTION: Approve the plat and authorize the necessary signatures.

4. *VAC2010-00024 - Request to vacate a portion of a platted utility easement; generally located west of West Street and south of Central Avenue. (District IV)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VII. CONSENT HOUSING AGENDA

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

IX. CONSENT AIRPORT AGENDA (ITEMS 1 AND 2)

1. *CCTV and Security Equipment Upgrade - Initiate Project and Supplemental Agreement No. 12 - Mid-Continent Airport.

RECOMMENDED ACTION: Approve the budget and the supplemental agreement and authorize the necessary signatures.

2. *Apron Trench Drain - Supplemental Agreement No. 13 - Mid-Continent Airport.

RECOMMENDED ACTION: Approve the supplemental agreement and authorize the necessary signatures.

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

None

XI. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

XII. CONSENT AGENDA (ITEMS 1 THROUGH 17A)

1. Report of Board of Bids and Contracts dated October 25, 2010.

- a. Report of Board of Bids and Contracts.

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal

Teresa A Vasquez

2010

El Patio Inc.*

(Consumption on Premises)

424 East Central

* General/Restaurant 50% or more gross revenue from sale of food.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:

- a. Preliminary Estimates. (See Attached)

RECOMMENDED ACTION: Receive and file.

4. Petitions for Public Improvements:

- a. Petition for Street Paving in Cornfield Addition, north 55th Street South, east of Seneca.(District IV)
b. Petition to construct a Water Distribution System to serve part of Lot 2, Block 11, Parkwilde Addition,
South of St. Louis, east of Young. (District IV)

RECOMMENDED ACTION: Approve Petitions; adopt resolutions.

5. Consideration of Street Closures/Uses.

- a. Community Events – Inspire Hope Run. (District II)
b. Community Events - 19th Annual Wichita Frostbite Regatta. (District VI)

RECOMMENDED ACTION: Approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Certificate of Liability Insurance on file with the Community Events Coordinator..

6. Agreements/Contracts:

- a. Lease of City-owned Parking Spaces at Southwest Corner of 3rd Street and Main Street to General Services Administration. (District VI)
b. Zebra Mussel Control Design Build Contract.

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

7. Property Acquisitions:

- a. Partial Acquisition of Land for a Temporary Construction Easement at the Southeast Side of Golden Prairie Road and SW 24th Street for the Integrated Local Water Supply Plan. (Harvey County)
- b. Acquisition of 1352 North Minneapolis for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)
- c. Partial Acquisition of 3309 East 13th Street North for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)
- d. Partial Acquisition of Land for Easements at the Southeast Corner of Golden Prairie Road and SW 48th Street for the Integrated Local Water Supply Plan. (Harvey County)
- e. Partial Acquisition for Right-of-Way at 1958 South 119th Street West for the 119th Street, Pawnee Avenue to Kellogg Improvement Project. (District IV)
- f. Acquisition of 1358 North Crestway for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

8. Minutes of Advisory Boards/Commissions

Board of Appeals of Plumbers and Gas Fitters, September 1, 2010
Board of Code Standards and Appeals, September 13, 2010

RECOMMENDED ACTION: Receive and file.

9. Report on Claims for September, 2010. (See Attached)

RECOMMENDED ACTION: Receive and file.

10. Contract for Pre-Employment and Fit-for Duty Assessments.

RECOMMENDED ACTION: Approve the contract and authorize the necessary signatures.

11. Neighborhood Facade Program Contract Approvals.

RECOMMENDED ACTION: Approve the contracts and authorize the necessary signatures.

12. Agreement to Respread Assessments, Woods North 2nd Addition. (District II)

RECOMMENDED ACTION: Approve the Agreement and amending ordinances and authorize the necessary signatures.

13. Agreement to Respread Assessments, Woods North Addition and Woods North 2nd Addition. (District II)

RECOMMENDED ACTION: Approve the Agreement and amending ordinance and authorize the necessary signatures.

14. Relocation of Pipeline in Waterfront Residential Addition, north of 13th, east of Webb. (District II)

RECOMMENDED ACTION: Approve the payment to Ritchie Associates, Inc. for the relocation of the pipeline.

15. Security Enhancements - Water Treatment Plant.

RECOMMENDED ACTION: Approve the project, authorize the expenditure, adopt the resolution, and authorize the necessary signatures.

16. Local S and E Wells.

RECOMMENDED ACTION: Approve the project, adopt the resolution, and authorize the necessary signatures.

17. Second Reading Ordinances: (First Read October 19, 2010)

- a. List of Second Reading Ordinances. (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

To follow: Council Workshop and City/County Joint Meeting: Heartland Preparedness Center

City of Wichita
City Council Meeting
October 26, 2010

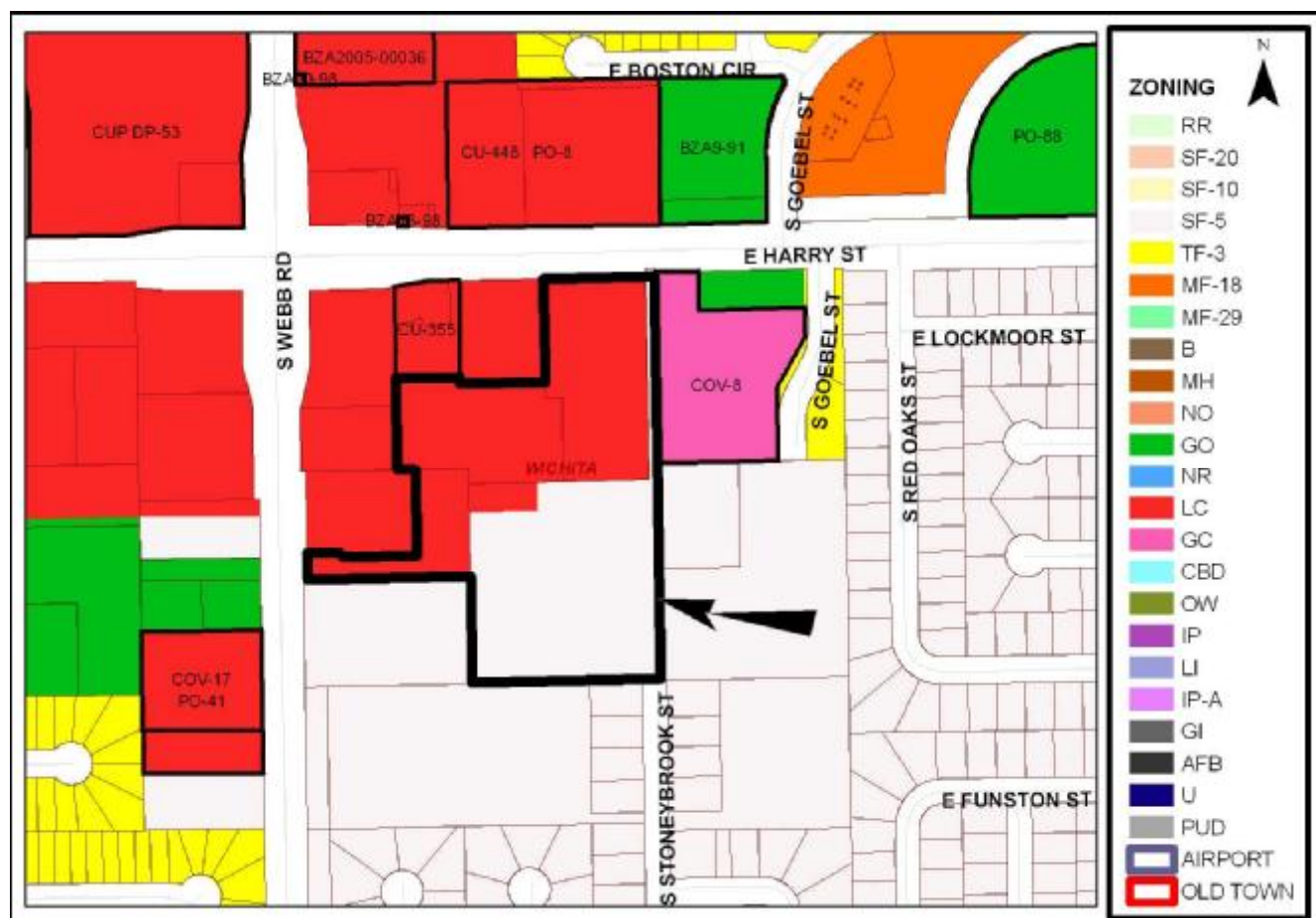
TO: Mayor and City Council Members

SUBJECT: ZON2009-00027 Associated with CUP2009-00026 – Extension of time to complete the platting requirement for a zone change from SF-5 Single-Family Residential (“SF-5”) to LC Limited Commercial (“LC”), and creation of DP-321 Harry and Webb Commercial Community Unit Plan; generally located southeast of Harry Street and Webb Road. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve a one-year extension of time to complete platting to October 26, 2011.



Background: On October 13, 2009, the City Council approved a zone change request from SF-5 Single-Family Residential (“SF-5”) to LC Limited Commercial (“LC”) and CUP DP 3321 for approximately 10.33 acres for the CUP and four acres for the zone change, located southeast of the intersection of East Harry Street and South Webb Road. Approval of the zone change request was subject to the condition of platting the property within one year. This is the first platting extension to be requested from the applicant since the zone change was approved in 2009. The platting process began in August, and the Metropolitan Area Planning Commission approved the Harry and Webb Commercial Addition at their September 9, 2010, meeting. However, the agent for the applicant expects that additional time will be needed to finalize some conditions that are required for the plat to be approved. Therefore, since the agent expects the finalization of the conditions will extend beyond the original October 13, 2010, platting deadline, the agent and applicant request a one-year extension of time to complete platting which requires City Council approval.

Analysis: Staff recommends that a one-year extension of time, by October 26, 2011, to complete platting be granted. The City Council may deny the request for an extension of time to complete platting. Denying the extension would declare the zone change null and void and would require reapplication and rehearing if the property owner still desired a zone change.

Financial Considerations: None.

Goal Impact: Promote Economic Vitality and Affordable Living.

Legal Considerations: No legal documents are required to enact the granting of the platting extension. The granting of a platting extension is indicated via letter to the applicant noting the extended platting deadline as granted by the City Council.

Recommendations/Actions: Approve a one-year extension of time to complete platting by October 26, 2011.



RECEIVED

SEP 15 2010

METROPOLITAN PLANNING
DATE ☐ _____

September 14, 2010

John Schlegel
Planning Department
10th Floor - City Hall
455 North Main
Wichita, Kansas 67201

RE: Request for a platting extension for approved zoning case ZON2009-00027 associated with CUP2009-00026 (DP-321 Harry and Webb Commercial Community Unit Plan) generally located south of Harry Street and east of Webb Road.

Dear Mr. Schlegel:

As agent for the applicant, our office is requesting a one-year time extension to complete the platting for the above-referenced matter.

We are requesting this extension in order to complete the platting process that began on August 9, 2010. The Planning Commission approved the Harry and Webb Commercial Addition last Thursday, September 9th, however our office expects the additional time needed to finalize several of the conditions will extend beyond the October 13, 2010 platting deadline.

If you have any questions about this request, please contact our office at 262-7271.

Sincerely,
Baughman Company, P.A.

Russ Ewy, AICP

Baughman Company, P.A.
315 E 11th
Wichita, Kansas 67211
P 316 262 7271 F 316 262 0149

cc: File



RECEIVED

SEP 15 2010

METROPOLITAN PLANNING
UNIT 2

September 14, 2010

John Schlegel
Planning Department
10th Floor - City Hall
455 North Main
Wichita, Kansas 67201

RE: Request for a platting extension for approved zoning case ZON2009-00027 associated with CUP2009-00026 (DP-321 Harry and Webb Commercial Community Unit Plan) generally located south of Harry Street and east of Webb Road.

Dear Mr. Schlegel:

As agent for the applicant, our office is requesting a one-year time extension to complete the platting for the above-referenced matter.

We are requesting this extension in order to complete the platting process that began on August 9, 2010. The Planning Commission approved the Harry and Webb Commercial Addition last Thursday, September 9th, however our office expects the additional time needed to finalize several of the conditions will extend beyond the October 13, 2010 platting deadline.

If you have any questions about this request, please contact our office at 262-7271.

Sincerely,
Baughman Company, P.A.

Russ Ewy, AICP

ENGINEERING
SURVEYING
PLANNING
LANDSCAPE
ARCHITECTURE

Baughman Company, P.A.
315 E 11th
Wichita, Kansas 67211
P 316-262-7271 F 316-262-0149

cc: File

City of Wichita
City Council Meeting
October 26, 2010

TO: Mayor and City Council

SUBJECT: SUB2010-00041 -- Plat of Harry and Webb Commercial Addition located on the south side of Harry and on the east side of Webb Road. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (13-0)

Background: The site, consisting of two lots on 10.28 acres, is a replat of portions of the Subway Addition, Nguyen Addition and Webb Road Addition and is located within Wichita's city limits. The site has been approved for a zone change (ZON2009-00027) from SF-5 Single-family Residential to LC Limited Commercial. The Harry and Webb Commercial Community Unit Plan (CUP2009-00026, DP-321) have also been approved. The applicant has submitted a CUP Certificate identifying the approved CUP and the special conditions for development on the property.

Analysis: Municipal services are available to serve the site. The applicant has submitted a Restrictive Covenant for the ownership and maintenance of the proposed reserves. A Driveway Closure Certificate has been submitted to guarantee the closure of any driveway openings located in areas of complete access control.

The plat has been approved by the Metropolitan Area Planning Commission subject to conditions.

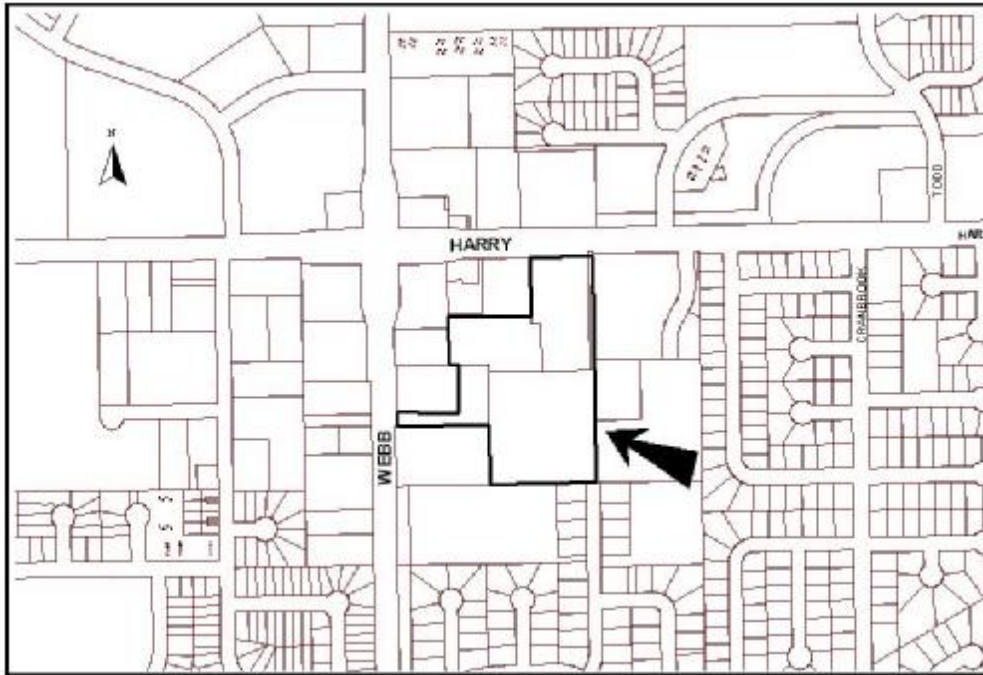
Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Notice of Community Unit Plan, Restrictive Covenant, Drive Approach Closure Certificate and Ordinance have been approved as to form by the Department of Law. The Notice of Community Unit Plan, Restrictive Covenant and Drive Approach Closure Certificate will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, authorize the necessary signatures and place the Ordinance on first reading.

Attachments: Notice of Community Unit Plan
Restrictive Covenant
Drive Approach Closure Certificate
Ordinance



Published in The Wichita Eagle on November 5, 2010

ORDINANCE NO. 48-883

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

**BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.**

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON 2009-00027

Zone change request from SF-5 Single-family Residential to LC General Commercial, on property described as:

Lots 1 and 2, Block A, and Reserves "A", "B", "C", and "D", Harry and Webb Commercial Addition, Wichita, Sedgwick County, Kansas.

Generally located on the south side of Harry and on the east side of Webb Road.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 2nd day of November, 2010.

ATTEST:

Karen Sublett, City Clerk

Carl Brewer, Mayor

(SEAL)

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

NOTICE OF COMMUNITY UNIT PLAN

THIS NOTICE made this 1st day of October, 2010, by **Wal-Mart Stores, Inc., a Delaware corporation**, hereinafter called Declarant,

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

HARRY AND WEBB COMMERCIAL ADDITION

Lots 1 and 2, Block A
Reserves "A", "B", "C" and "D"

and

WHEREAS, Declarant is desirous to file notice that a community unit plan approved by the Wichita City Council is on file with the Metropolitan Area Planning Department, known as **Harry and Webb Commercial Community Unit Plan (DP-321)**.

NOW, THEREFORE, the Declarant wants to make notice that the approved community unit plan has placed restrictions on the use and requirements on the development of the above described real property.

The Metropolitan Area Planning Department is located on the 10th Floor, City Hall, Wichita, Kansas, (316) 268-4421.

The community unit plan shall be binding on the owners, their heirs, or successors or assigns and is a document running with the land and is binding on all successors in title to **Lots 1 and 2, Block A, and Reserves "A", "B", "C" and "D", Harry and Webb Commercial Addition, Wichita, Sedgwick County, Kansas.**

EXECUTED the day and year first written above.

Wal-Mart Stores, Inc.

By: 

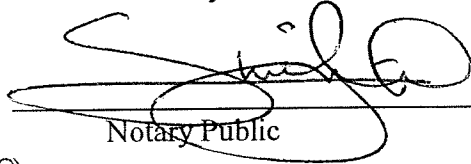
John Clarke, Vice President - Real Estate

508 2010-41

STATE OF Arkansas)
COUNTY OF Benton) SS:

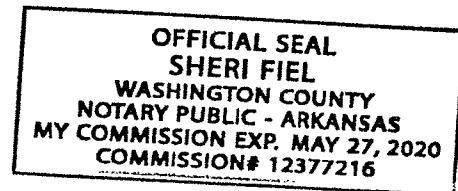
BE IT REMEMBERED, that on this 1st day of October, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came **John Clarke, as Vice President - Real Estate, of Wal-Mart Stores, Inc., a Delaware corporation**, personally known to me to be the same person who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed **on behalf of the corporation.**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.


Notary Public

(My Appointment Expires: May 27, 2020)

Approved as to form:



Gary E. Rebenstorf, City Attorney

RESTRICTIVE COVENANT

THIS DECLARATION made this 1st day of October, 2010, by Wal-Mart Stores, Inc., a Delaware corporation, hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

HARRY AND WEBB COMMERCIAL ADDITION
Lot 1, Block A

WHEREAS, Declarant is desirous in connection therewith that various provisions for the maintenance and responsibility for the maintenance be placed of record for Reserves "A", "B", "C" and "D", Harry and Webb Commercial Addition, Wichita, Sedgwick County, Kansas.

NOW, THEREFORE, Declarant hereby declares and covenants:

1. That Reserve "A" is hereby reserved for open space, lakes, berms, signage, entry monuments, sidewalks, landscaping, drainage purposes, and utilities as confined to easement.

Reserve "B" is hereby reserved for driveways, access purposes, signage, entry monuments, sidewalks, open space, berms, landscaping, drainage purposes, and utilities as confined to easement.

Reserve "C" is hereby reserved for open space, sidewalks, landscaping, berms, and drainage purposes.

Reserve "D" is hereby reserved for driveways, access purposes, signage, entry monuments, sidewalks, open space, landscaping, berms, drainage purposes, walls as confined to easement, utilities as confined to easement, and pipelines and related appurtenances as confined to easement.

508 2010-41

2. Reserves "A", "B", "C" and "D", shall be owned and maintained by the owner of Lot 1, Block A.

3. That the owners hereby grant an irrevocable easement to whichever appropriate governing body or authority has jurisdiction, to enter upon the Reserves, as defined, for the purposes of maintaining such Reserves. This easement is conditioned upon the following event or events happening:

A. That the Declarant or the Lot Owner, as may be appropriate, has failed to maintain the reserves in a reasonable and prudent manner.

and,

B. That the appropriate governing body has given written notice to the Declarant or the Lot Owner and neither entity has responded in initiating corrective action within thirty (30) days of such notice. If the governing body has taken action to maintain the reserve under this covenant, the Declarant or Lot Owner shall pay promptly the costs expended. If the costs are not paid within thirty (30) days of the rendering of an account, the costs shall be considered an assessment against Lot 1, Block A, in **Harry and Webb Commercial Addition**, and shall be considered a lien thereon and be treated in the same manner as a special assessment.

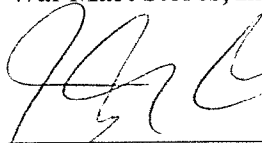
This covenant shall be binding on the owner, their heirs, or successors or assigns and is a covenant running with the land and is binding on all successors in Lot 1, Block A, in **Harry and Webb Commercial Addition**, Wichita, Sedgwick County, Kansas.

The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.

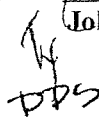
EXECUTED the day and year first written.

Wal-Mart Stores, Inc.

By:



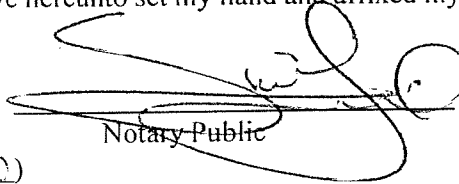
John Clarke, Vice President - Real Estate



STATE OF Arkansas)
COUNTY OF Benton) SS:

BE IT REMEMBERED, that on this 1st day of October, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came **John Clarke, as Vice President - Real Estate, of Wal-Mart Stores, Inc., a Delaware corporation**, personally known to me to be the same person who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed **on behalf of the corporation.**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.


Notary Public

(My Appointment Expires: May 27, 2020)

Approved as to form:



Gary E. Rebenstorf, City Attorney

DRIVE APPROACH CLOSURE CERTIFICATE

Sedgwick County)
) SS
State of Kansas)

Wal-Mart Stores, Inc., a Delaware corporation, owner(s) of that certain real property to be known as **Harry and Webb Commercial Addition, Wichita, Sedgwick County, Kansas**, is in the process of platting said property, and does hereby acknowledge that in accordance with the requirements of the platting process as set forth by the City of Wichita, any existing drive approaches on **Harry Street** in excess of the **one** allowed per said platting requirements shall be closed.

This is to place on notice the owner(s) of the above-described property and subsequent owners thereof that, as a result of the above-cited platting requirements, said owner and subsequent owners thereof are responsible for seeing that such drive approach or approaches are removed and closed per City of Wichita specifications for such work, and that sufficient guaranty of such closure(s), in a form acceptable to the City of Wichita (e.g. – bond, cash, letter of credit, etc.) and/or acknowledgement that the City of Wichita may withhold the issuance of an occupancy permit for any future building construction, will be a pre-condition of the issuance of any future building permit for all development on the above-described property.

It is further understood this certificate hereby supersedes and replaces the Drive Approach Closure Certificate recorded on October 4, 2007 at Document Number/Film-Page 28922201.

Signed this 1st day of October, 2010.

Wal-Mart Stores, Inc.

By: _____

John Clarke, Vice President - Real Estate

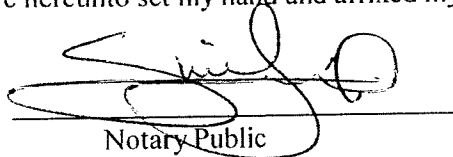
JJB 2010-11

DDS

STATE OF Arkansas)
COUNTY OF Benton) SS:

BE IT REMEMBERED, that on this 1st day of October, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came **John Clarke, as Vice President - Real Estate, of Wal-Mart Stores, Inc., a Delaware corporation**, personally known to me to be the same person who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed on **behalf of the corporation.**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.


Notary Public

(My Appointment Expires: May 27, 2020)

Approved as to form:



Gary E. Rebenstorf, City Attorney

City of Wichita
City Council Meeting
October 26, 2010

TO: Mayor and City Council

SUBJECT: SUB2010-00046 -- Plat of Madeline Langerot Addition located north of Douglas, east of West Street. (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (11-0)

Background: The site, consisting of two lots on five acres, is located within the Wichita's city limits and is zoned TF-3 Two-family Residential.

Analysis: Municipal services are available to serve the site.

The plat has been approved by the Metropolitan Area Planning Commission subject to conditions.

Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: None.

Recommendations/Actions: It is recommended that the City Council approve the plat and authorize the necessary signatures.

Attachments: None.



City of Wichita
City Council Meeting
October 26, 2010

To: Mayor and City Council

Subject: VAC2010-00024 - Request to vacate a portion of a platted utility easement; generally located west of West Street and south of Central Avenue. (District IV)

Initiated By: Metropolitan Area Planning Department

Agenda: Planning (Consent)

Staff Recommendation: Approve.

MAPC Recommendation: Approve (unanimously).

Background: The applicant proposes to vacate the east 154 feet of the platted 20-foot wide utility easement located parallel to the south lot line of Lots 1 and 2, West City Addition. There is a manhole and sewer line in the platted easement, but no water line. The proposed vacation will leave 20 feet of the platted easement on the west end of the subject property; this is the minimum easement required. As proposed, no other utilities will be affected by the vacation. The applicant proposes to demolish the existing Braum's building and re-build as a Dollar General. The West City Addition was recorded with the Register of Deeds on October 31, 1979.

Analysis: The MAPC voted (10-0-1) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

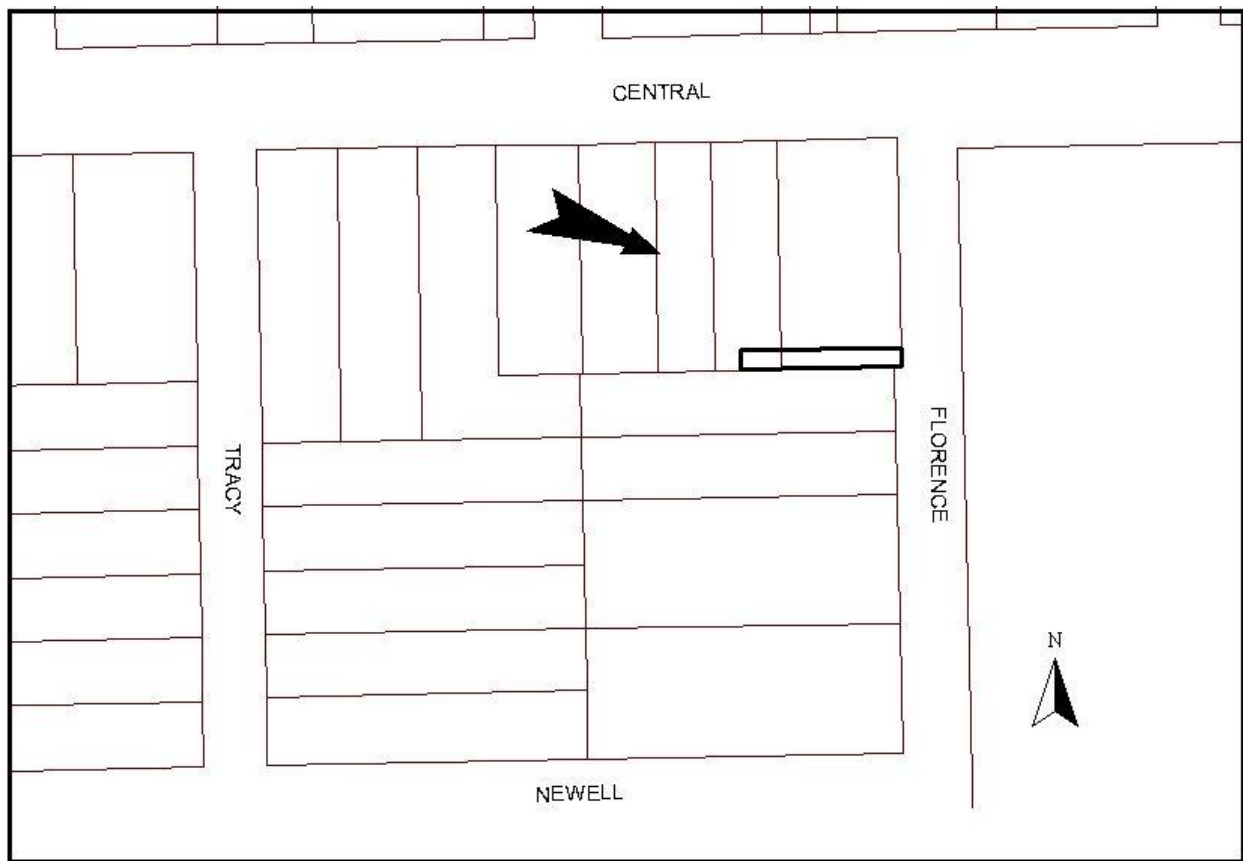
Financial Considerations: None.

Goal Impact: Ensure efficient infrastructure.

Legal Considerations: A certified copy of the Vacation Order has been approved as to form by the Department of Law and will be recorded with the Register of Deeds.

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

Attachments: None.



**City of Wichita
City Council Meeting
October 26, 2010**

TO: Wichita Airport Authority

SUBJECT: CCTV and Security Equipment Upgrade
Initiate Project and Supplemental Agreement No. 12
Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the budget and Supplemental Agreement No. 12.

Background: This project is identified in the Airport Capital Improvement Program (CIP). It is needed to modernize the current Closed Circuit Television (CCTV) system equipment which operates throughout Mid-Continent Airport.

HNTB was selected through the Staff Screening Process as the design team for this project. The objective is to integrate and sequence various related elements of the overall terminal area redevelopment program. The intent was that supplemental agreements would be entered into each time an element was added or modified. Some projects are funded from budget sources separate from the Air Capital Terminal 3 (ACT 3) program. The following table depicts the original contract with HNTB and the supplemental agreements through No. 12:

	<u>Amount</u>	<u>Description</u>	<u>Date</u>
Contract	\$12,660,000	ACT 3 Design, Bid and C.A. Contract	6/18/2006
SA No. 1	128,709	North Shuttle Lot, Construction Related Services (CRS)	2/7/2008
SA No. 2	311,767	Apron Phase I, Resident Engineering	8/5/2008
SA No. 3	53,137	Customs Federal Inspection Facilities Design	9/23/2008
SA No. 4	43,594	North Shuttle Lot, Additional Construction Related Services	1/27/2009
SA No. 5	74,369	Interim Customs Construction Related Services	5/12/2009
SA No. 6	42,414	East Data Center Design, Bid & C.A. Services	6/9/2009
SA No. 7	374,018	Apron Phase II, Construction Related Services	7/7/2009
SA No. 8	500,969	Landside Utilities, Phase I, Construction Related Services	7/7/2009
SA No. 9	13,537	East Data Center Emergency Generator Design & CRS	11/24/2009
SA No. 10	-283,237	ACT3 Design Contract Amendments	12/1/2009
SA No. 11		(Deferred)	N/A
SA No. 12	<u>98,043</u>	CCTV System Upgrade Design, Bid & CA Services (pending)	10/26/2010
	\$14,017,320	Total Contract	

Analysis: This project is required to upgrade the existing CCTV system headend and network equipment. It is the first step in modernizing and expanding the campus-wide security surveillance

system. The last major upgrade to the system was undertaken in 2001 and to take advantage of enhancements in technology it is necessary to upgrade. The Transportation Security Administration (TSA) has provided input and guidance for the system to be installed. The need for this project is independent of the ACT 3 program and does not include any expenditure that will be wasted if the new terminal is not constructed. Staff has prepared a supplemental agreement for the system equipment upgrade design services.

Financial Considerations: The cost of the design, procurement and construction administration services with HNTB is a not-to-exceed amount of \$98,043. A budget of \$110,000 is requested for this project and will be funded with a combination of Passenger Facility Charges (PFCs) and TSA grant funding.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through providing services which enhance the security of the Airport facilities.

Legal Considerations: The Law Department has approved the supplemental agreement as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the budget and the supplemental agreement, and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 12.

SUPPLEMENTAL AGREEMENT NO. 12
TO THE
AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
THE WICHITA AIRPORT AUTHORITY, "OWNER",
AND
HNTB CORPORATION, "CONSULTANT",

WITNESSETH:

WHEREAS, there now exists a Contract, dated July 18, 2006, between the two parties covering professional services to be provided by the CONSULTANT in conjunction with the construction of improvements to Wichita Mid-Continent Airport.

WHEREAS, ARTICLE IV, B. of the referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the CONSULTANT provide reduced and/or additional services required for the PROJECT and receive reduced and/or additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

I. SCOPE OF SERVICES

The description of the improvements that the OWNER intends to construct and thereafter called the "PROJECT" as stated within ARTICLE I of the referenced Contract is hereby amended to include the following:

Additional design, procurement and installation phase services related to Package 6c (Existing CCTV System, Headend and Network Equipment Upgrade).

- Design, procurement and installation phase services as described in the attached Additional Services Request #25g – Existing CCTV System, Headend and Network Equipment Upgrade (Package 6c), Ross & Baruzzini (R&B) Communications and Security Systems Scope dated 10/6/10. Additional detail is provided in the enclosed budgetary estimate.
- Coordination and project management services related to the above.

The following services are not included in the scope of this Supplemental Agreement:

- Preparation of bid/procurement requirements (Divisions 0 and 1).
- Construction/installation phase services beyond the scope defined in our Basic Services.

II. TIME OF SERVICES

A. The anticipated schedule for completion of the design and construction documents is:

- | | |
|----------------------|------------------------------------|
| • 50% CD documents | five weeks after notice to proceed |
| • Owner review | one week |
| • 100% CD documents | two weeks |
| • Owner review | three working days |
| • Final CD documents | three working days |

III. PAYMENT PROVISIONS

The fee in ARTICLE IV, A3, shall be amended to include the following:

Payment to the CONSULTANT for the performance of the professional services as outlined in this Supplemental Agreement shall be made on the basis of actual costs plus a fixed fee of \$1,854; the total including reimbursable expenses shall not exceed \$98,043.00 (Exhibit SA12-B).

IV. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the OWNER and the CONSULTANT executes this Supplemental Agreement as of this _____ day of _____, 2010.

ATTEST:

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By: _____
Karen Sublett, City Clerk

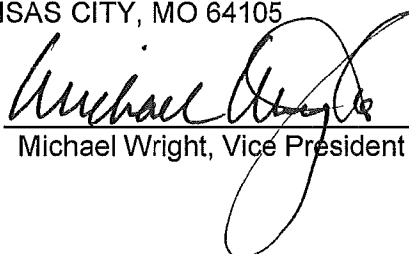
By: _____
Carl Brewer, President
"OWNER"

By: _____
Victor White, Director of Airports

ATTEST:

HNTB CORPORATION
715 KIRK DRIVE
KANSAS CITY, MO 64105

By:  _____
Philip Hannon, Senior Project Manager

By:  _____
Michael Wright, Vice President

APPROVED AS TO FORM: _____ Date: _____
Director of Law

ATTACHMENTS:

- Exhibit SA12-A – Ross & Baruzzini Additional Services Request #25g, dated 10/6/10
- Exhibit SA12-B – Estimated Cost of Consultant's Services, HNTB, dated 10/6/10
- Exhibit SA12-C – Estimated Cost of Consultant's Services, Ross & Baruzzini, dated 10/6/10

**Additional Services Request #25g – Existing CCTV System, Headend and Network
Equipment Upgrade (Package 6c)
Wichita Mid-Continent Airport – Air Capital Terminal 3 Project**

**ROSS & BARUZZINI
COMMUNICATIONS AND SECURITY SYSTEMS**

Package 6c – Existing CCTV System, Headend and Network Equipment Upgrade

General

At the request of the Wichita Airport Authority, the following scope includes parceling out portions of Package 6a – Network and Package 6b – Security Systems to maximize available TSA Funding. The two major components include the Closed-Circuit Television System (CCTV) headend, and the new network to support its system operation. The intent is to provide electronic visual surveillance operations with the existing analog cameras prior to the procuring the new IP-based system. The design criteria for this scope are based on providing an interim system upgrade of the existing CCTV headend to utilize available TSA Funding while minimizing the potential for “sunk costs”. The procurement for Package 6a and 6b will complete the full system implementation.

Based on discussions with WAA, the proposed accelerated sequence of activities will be in ahead of the design and implementation schedule presented with Packages 6a and 6b. As such, the substantial completion for this work is planned for May, 2011. The schedule to produce procurement documents will be compressed over an eight week period.

Design Phase Services

- Provide interim rack-up elevations; modify symbols, notes, and schedules as it pertains to this upfront procurement only.
- Provide camera details based on interim solution.
- Provide specifications for Division 27 – Communications
- Coordinate this parceled package with the future Package 6a and 6b procurement documents.
- Provide an interim package of drawings and technical specifications. These documents will be prepared to meet City and TSA technical and procurement requirements.
- Revise the Engineer's Cost Opinion to reflect the interim scope and associated costs.
- Provide a sample RFP document for WAA and /or AECOM's use in preparing appropriate procurement documents for this package. Review RFP or Division 0 and 1 documents prepared by WAA/AECOM.

Procurement Phase Services – Provide procurement phase services for an additional package, including attending an additional pre-proposal meeting.

**City of Wichita
City Council Meeting
October 26, 2010**

TO: Wichita Airport Authority

SUBJECT: Apron Trench Drain
Supplemental Agreement No. 13
Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve Supplemental Agreement No. 13.

Background: This project is identified in the Airport Capital Improvement Program (CIP). It is a segment of the air carrier apron glycol collection system.

HNTB was selected through the Staff Screening Process as the design team for this project. The objective is to integrate and sequence various related elements of the overall terminal area redevelopment program. The intent was that supplemental agreements would be entered into each time an element was added or modified. Some projects are funded from budget sources separate from the Air Capital Terminal 3 (ACT 3) program. The following table depicts the original contract with HNTB and the supplemental agreements through No. 13:

	<u>Amount</u>	<u>Description</u>	<u>Date</u>
Contract	\$12,660,000	ACT 3 Design, Bid and C.A. Contract	6/18/2006
SA No. 1	128,709	North Shuttle Lot, Construction Related Services (CRS)	2/7/2008
SA No. 2	311,767	Apron Phase I, Resident Engineering	8/5/2008
SA No. 3	53,137	Customs Federal Inspection Facilities Design	9/23/2008
SA No. 4	43,594	North Shuttle Lot, Additional Construction Related Services	1/27/2009
SA No. 5	74,369	Interim Customs Construction Related Services	5/12/2009
SA No. 6	42,414	East Data Center Design, Bid & C.A. Services	6/9/2009
SA No. 7	374,018	Apron Phase II, Construction Related Services	7/7/2009
SA No. 8	500,969	Landside Utilities, Phase I, Construction Related Services	7/7/2009
SA No. 9	13,537	East Data Center Emergency Generator Design & CRS	11/24/2009
SA No. 10	-283,237	ACT3 Design Contract Amendments	12/1/2009
SA No. 11		(Deferred)	N/A
SA No. 12	98,043	CCTV System Upgrade Design, Bid & CA Services (Pending)	10/26/2010
SA No. 13	<u>99,193</u>	Apron Trench Drain Construction Related Services (Pending)	10/26/2010
	\$14,116,513	Total Contract	

Analysis: As a part of the expanded glycol collection and storage system on the air carrier apron, a trench drain will be installed west of the existing Terminal. Installation of the trench drain will be accomplished without causing interruptions to airline operations since the affected portion of the air

carrier apron is not being leased. Staff has prepared a supplemental agreement for the professional services.

Financial Considerations: The cost of the design, bid and construction-phase services with HNTB is a not-to-exceed amount of \$99,193. The current budget will cover this expense.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through infrastructure improvements to allow uninterrupted Airport services to be provided.

Legal Considerations: The Law Department has approved the supplemental agreement as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the supplemental agreement, and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 13.

SUPPLEMENTAL AGREEMENT NO. 13
TO THE
AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
THE WICHITA AIRPORT AUTHORITY, "OWNER",
AND
HNTB CORPORATION, "CONSULTANT",

WITNESSETH:

WHEREAS, there now exists a Contract, dated July 18, 2006, between the two parties covering professional services to be provided by the CONSULTANT in conjunction with the construction of improvements to Wichita Mid-Continent Airport.

WHEREAS, ARTICLE IV, B. of the referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the CONSULTANT provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

I. SCOPE OF SERVICES

The description of the improvements that the OWNER intends to construct and thereafter called the "PROJECT" as stated within ARTICLE I of the referenced Contract is hereby amended to include the following:

- A. DESIGN SERVICES. Provide the following Design Services for the section of apron trench drain west of the west concourse.
 - 1. Prepare modifications and additions to previously prepared drawings and prepare specifications to provide complete bid and construction documents as a separate package.
 - 2. Prepare Engineer's Report and supporting documentation for review by FAA.
- B. PROCUREMENT AND CONSTRUCTION ADMINISTRATION. Provide bid phase and construction administration services for the section of apron trench drain west of the west concourse in accordance with the terms of the original agreement.

- C. RESIDENT ENGINEERING SERVICES. Provide Resident Engineering Services for the section of apron trench drain west of the west concourse. Resident Engineering duties will routinely be the responsibility of the ENGINEER's Resident PROJECT Representative.
1. During Construction Provide the Following:
- a. Provide personnel acceptable to the OWNER to perform technical observation during construction of the PROJECT, including a full-time Resident Representative, who shall be supervised by the PROJECT Resident Engineer. The Resident Engineer shall be a registered Professional Engineer with qualifications conforming to the Central Region FAA "Standards for Construction Observation", and such supporting staff as may be required. Through continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Representative and his supporting staff, the ENGINEER will endeavor to provide further protection for the OWNER against defects and deficiencies in the work; but the furnishing of such Resident representation shall not make the ENGINEER responsible for the Contractor's failure to perform the construction work in accordance with the contract documents.
 - b. Establish construction layout control points including benchmarks and horizontal control points as may be required. Periodically review and check in field the Contractor's staking notes and layout. This includes actual field check of staking.
 - c. Supervise inspection and OWNER responsible testing. Prepare "Construction Observation Program" and submit same to the OWNER & FAA for concurrence prior to the start of Construction. Arrange for, conduct (or witness), field, laboratory, and shop tests of construction materials as required by the plans and specifications; determine the suitability of materials, and compliance with "Buy American" requirements for materials on the site and brought to the site, to be used in the construction; check the construction activities to determine compliance with the intent of the design; measure, compute, or check quantities of work performed and quantities of material in-place for partial and final payments to the Contractor; and maintain diaries and other project records to document the work.
 - d. Photograph existing conditions prior to construction beginning on the project and key construction activities throughout the project. In addition photograph key existing and new underground utilities for incorporation into the Record Drawings. File and document as per FAA requirements.
 - e. Prepare elementary and supplementary sketches required and conduct preliminary negotiations necessary to resolve "changed" field conditions encountered.
 - f. Attend all project meetings, develop and provide minutes of project meetings within 7 days after the meeting.
 - g. Review and forward all construction schedules, material certifications and detailed shop and erection drawings to the ENGINEER's Project Manager. Assist the Project Manager in evaluating the acceptability of all submittals.
 - h. Review, analyze, and prepare recommendations for laboratory, shop and mill test reports of materials and equipment.
 - i. Perform on-site Labor Standard Interviews.
 - j. Review requests for monthly and final payments to the Contractor and forward same to the ENGINEER's Project Manager with recommendations for approval.
 - k. Provide project record information, and utility documentation data received from the OWNER'S Staff, to the ENGINEER's Project Manager for preparation of "Record" drawings, and a "Summary of Test Reports" on the completed work. Use

GPS Unit in coordination with OWNER's staff for documenting exact location of any existing utilities and all new utilities with the OWNER's Staff including Photo Documentation.

- i. Prepare "Certificates of Completion" for review by the ENGINEER's Project Manager and submit same to the OWNER.
- m. Prepare initial drafts and conduct preliminary negotiations for all Change Orders and Supplemental Agreements covering work on the PROJECT. Submit same to the ENGINEER'S Project Manager for review and thenceforth to the OWNER for approval.
- n. Review work performed by DBE Contractors for conformance with their Contractual responsibilities.
- o. Provide on-site and local transportation for the Resident PROJECT Representative and supporting staff to perform the duties.
- p. Provide basic testing equipment and supplies for the Resident PROJECT Representative and supporting staff to perform the duties associated with the OWNER'S quality assurance testing at the frequency and manner set forth in the specifications.
- q. Provide special field office equipment including computer, printer, cartridges, copier, some furnishings and all expendable office supplies, except that the on-site field office, including utilities and some furnishings, shall be provided by the OWNER.
- r. Receive and prepare recommendations relative to work performed by inspection bureaus and outside commercial testing laboratories for inspection and/or testing of materials or procedures entering into the construction, except that the cost of all such tests and inspections by bureaus and outside commercial testing laboratories, shall be authorized and paid for by the OWNER.
- s. Meet with the OWNER as necessary to confer with respect to the duties and project services.

II. TIME OF SERVICES

Completion of construction phase services is dependent upon the Contractor's progress and the time frame set forth in the construction contract documents. The fee(s) included in this Agreement are based on substantial completion of the construction within 60 calendar days of issuance of Notice to Proceed to the Contractor. Delivery of all PROJECT close out items to the OWNER is to be within 30 calendar days following Final Acceptance, exclusive of any delays beyond the control of the CONSULTANT.

III. PAYMENT PROVISIONS

The fee in ARTICLE IV, A3, shall be amended to include the following:

Payment to the CONSULTANT for the performance of the professional services as outlined in this Supplemental Agreement shall be made on the basis of actual costs plus a fixed fee of \$1,192.00; the total including reimbursable expenses shall not exceed \$99,193.00 (Exhibit SA13-A). Payment for work by Sub-consultants shall also be on the basis of actual cost.

IV. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the OWNER and the CONSULTANT execute this Supplemental Agreement as of this _____ day of _____, 2010.

ATTEST:

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS


By: _____
Karen Sublett, City Clerk


By: _____
Carl Brewer, President
"OWNER"

By: _____
Victor White, Director of Airports

ATTEST:

HNTB CORPORATION
715 KIRK DRIVE
KANSAS CITY, MO 64105

By: 
Philip L. Hannon, Senior Project Manager

By: 
Michael W. Wright, Vice President

APPROVED AS TO FORM: _____ Date: _____
Director of Law

ATTACHMENTS: EXHIBIT SA13-A – Estimated Cost of Consultant's Services, HNTB, dated 10/8/10
EXHIBIT SA13-A – PEC Civil Estimate of Hours and Fees, dated 9/30/10
EXHIBIT SA13-A – PEC Engineering Fee Estimate, dated 9/24/10

Wichita Mid-Continent Airport - Terminal Area Redevelopment Project
Estimated Cost of Consultant's Services
HNTB Architecture

10/8/2010

Bid Package and Construction Related Services for Trench Drain West of West Concourse
Additional Services Request No. 26 (rev 4)
HNTB Project 34912-DS-007

1. Direct Salary Costs			
	<u>Hours</u>	<u>Avg Rate</u>	<u>Cost</u>
Total Direct Salary Costs	56	\$57.24	\$3,205
2. Labor and General & Administrative Overhead			
Percentage of Direct Salary Costs	147.85%		\$4,739
3. Total Labor Cost - Subtotal of Items 1 and 2			<u>\$7,944</u>
4. Fixed Fee	15.00%		\$1,192
5. Subtotal of Items 3 and 4			<u>\$9,136</u>
6. Direct Non-Salary Expenses			
Transportation and Subsistence		270.00	
Printing and Deliveries		400.00	
Other Expenses		0.00	
Total Direct Non-salary Expenses			\$670
7. Subtotal of Items 5 and 6			<u>\$9,806</u>
8. Subconsultant Costs			
Professional Engineering Consultants (design office)		21,686	
Professional Engineering Consultants (resident engineering))		67,701	
			89,387
Total Not to Exceed Proposed Cost			<u>99,193</u>

Wichita Mid-Continent Airport - Terminal Area Redevelopment Project
HNTB Architecture - Estimate of Hours and Fees 09/30/10
Trench Drains New Project

PEC-CIVIL

	Total Hours	Fee Estimate
Summary		
Construction Documents Phase	153	5,443
Bid Phase	36	1,309
Construction Phase	40	1,407
Total	229	8,159
Overhead	1.3112	10,698
Subtotal		18,857
Fixed Fee	15%	2,829
Expenses		0
Total Fee and Expenses - Consultant		21,686
Explanation:		
Other		
Other		

ENGINEERING FEE ESTIMATE				
PROFESSIONAL ENGINEERING CONSULTANTS, P.A.				
ENGINEERS				
WICHITA, KANSAS				
PROJECT		LOCATION		
AIR CARRIER APRON WEST TRENCH DRAIN		Wichita Mid-Continent Airport		
WORK ITEM		PROJECT NO.	DATE	
Construction Phase Services - 60 Calendar Days		FAM AIP PROJ # 3-20-0086-77 COW PROJ # 777777	24 September 2010	
DESCRIPTION				
Contract Administration & Resident Engineering Services				
(I) SALARY COSTS				
POSITION TITLE	RATE	MAN HOURS	AMOUNT	TOTAL (SUBTOTAL)
1. PRINCIPALS			\$ -	
2. PROJECT MANAGER	\$45.00 / hr.	26	\$ 1,170.00	
3. PROJECT ENGINEER			\$ -	
4. DESIGN ENGINEER			\$ -	
5. DESIGN TECHNICIAN			\$ -	
6. DRAFTER			\$ -	
7. CAD OPERATOR			\$ -	
8. SURVEYOR, PARTY CHIEF			\$ -	
9. SURVEYOR, INSTRUMENT MAN			\$ -	
10. SURVEYOR, AIDES			\$ -	
11. FIELD ENGINEER	\$43.00 / hr.	200	\$ 8,600.00	
12. INSPECTOR, SUPERVISOR			\$ -	
13. INSPECTOR, TECHNICIAN I			\$ -	
13. INSPECTOR, TECHNICIAN I (OT)			\$ -	
14. INSPECTOR, TECHNICIAN II	\$22.00 / hr.	388	\$ 8,536.00	
14. INSPECTOR, TECHNICIAN II (OT)	\$33.00 / hr.	118	\$ 3,894.00	
15. INSPECTOR, TECHNICIAN III	\$21.00 / hr.	40	\$ 840.00	
15. INSPECTOR, TECHNICIAN III (OT)			\$ -	
16. BATCH PLANT TECHNICIAN			\$ -	
16. BATCH PLANT TECHNICIAN (OT)			\$ -	
17. STENO & CLERICAL	\$18.00 / hr.	41	\$ 738.00	
SUBTOTAL		813		\$ 23,778.00
(II) OVERHEAD 1.3112 X (I)				\$ 31,178.00
(III) SUBTOTAL [(I) + (II)]				\$ 54,956.00
(IV) FIXED FEE 15%				\$ 8,243.00
(V) OTHER EXPENSE				
	RATE	UNITS	AMOUNT	
1. OFFICE EQUIPMENT	\$450.00 / mo.	2	\$ 900.00	
2. TRAVEL PER MILE	\$0.60 / mile	1,990	\$ 1,194.00	
3. LAB TESTING	\$2,108.00 / LB	1	\$ 2,108.00	
4. CELL PHONES (AT COST)	\$50.00 / mo.	2	\$ 100.00	
5. CAD (Utility As Built Drawings)			\$ -	
6. PRINTING (SPEC ETC.)	\$200.00 / ea.	1	\$ 200.00	
7. OTHER			\$ -	
8. OTHER			\$ -	
SUBTOTAL				\$ 4,502.00
(VI) TOTAL FEE FOR PROJECT [(III) + (IV) + (V)]				\$ 67,701.00

RECEIVED

OCT 12 2010

AIRPORTENGINEERING

**PRELIMINARY ESTIMATES
FOR CITY COUNCIL OCTOBER 26, 2010**

- a. Water Main Improvements: Bentley Tie In (ASR) (117th Street North from 151st Street West to 119th Street West) (448-90498/633972/788014) See Special Provisions. (District Sedg Co) - \$940,404.00
- b. Lateral 153, Main 4, Sanitary Sewer #23 to serve Walnut Grove & Barbee Subdivision (north of 33rd Street North, west of Jeanette) (468-84598/744305/480994) Traffic to be maintained using flagpersons and barricades. (District VI) - \$23,800.00
- c. Lateral 154, Main 4, Sanitary Sewer #23 to serve Walnut Grove Subdivision (south of 35th Street North, east of Seneca) (468-84613/744307/480996) Traffic to be maintained using flagpersons and barricades. (District VI) - \$32,130.00
- d. NOMAR Access Alley Reconstruction (north of 21st Street North between Market and Broadway) (472-84943/792409/435379) Traffic to be maintained using flagpersons and barricades. (District VI) - \$83,951.00
- e. 2010 Sanitary Sewer Reconstruction, Phase 4 (north of Central, east of Meridian) (468-84713/620564/660681) Traffic to be maintained using flagpersons and barricades. (District VI) - \$35,000.00

City of Wichita
City Council Meeting
October 26, 2010

TO: Mayor and City Council

SUBJECT: Petition for Street Paving in Cornfield Addition, north 55th Street South, east of Seneca. (District IV)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Approve the new petition.

Background: On July 13, 2010, the City Council approved a petition to pave Sycamore Circle in the Cornfield Addition. An attempt to award a construction contract within the budget set by the petition was not successful. The developer has submitted a new petition to increase the project budget. The signatures on the petition represent 100% of the improvement district.

Analysis: The project will provide street paving for a new residential development located north of 55th Street South, east of Seneca.

Financial Considerations: The existing petition totals \$60,000. The new petition totals \$73,000. The funding source is special assessments.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing street paving required for a new residential development.

Legal Considerations: The petition and resolution have been approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council approve the new petition, adopt the resolution and authorize the necessary signatures.

Attachments: Map, CIP sheet, petition, and resolution.

**CAPITAL IMPROVEMENT
PROJECT AUTHORIZATION
CITY OF WICHITA**

USK

To Initiate Project

To Revise Project

a

1. Prepare in triplicate

2. Send original & 2 copies to budget

3. City Manager to sign all copies.

4. File original w/ initiating resolution in City Clerk.

5. Return 2nd copy to initiating department

6. Send 3rd copy to Controller.

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location	
Public Works	Eng	9/15/2010	Place Signatures Circle in Circled Section	
5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date	
NI-200424		2010		
9. Estimated Start Date As Required	10. Estimated Completion Date As Required	11. Project Revised		
12. Project Cost Estimate			12A.	
ITEM	CO	SA	Water Utility	TOTAL
Right of Way				
Paving, grading & curbs		\$71,000		\$71,000
Bridge & Culverts				
Drainage				
Sanitary Sewer				
Sidewalk				
Water				
Multi-Use Path				
Totals			\$73,000	\$73,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				
13. Recommendation:				
Approve the Petition and adopt the Resolution				
Division Head	Department Head		Budget Officer	City Manager
			Date	Date

First Published in the Wichita Eagle on October 29, 2010

RESOLUTION NO. 10-275

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON SYCAMORE CIRCLE, FROM THE SOUTH LINE OF 51ST ST. SOUTH TO AND INCLUDING CUL-DE-SAC (NORTH OF 55TH ST. SOUTH, EAST OF SENECA) 472-84871 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON SYCAMORE CIRCLE, FROM THE SOUTH LINE OF 51ST ST. SOUTH TO AND INCLUDING CUL-DE-SAC (NORTH OF 55TH ST. SOUTH, EAST OF SENECA) 472-84871 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 09-336 adopted on October 20, 2009 and Resolution No. 10-178 adopted on July 13, 2010 are hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on Sycamore Circle, from the south line of 51st St. South to and including cul-de-sac (north of 55th St. South, east of Seneca) 472-84871.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to Seventy-Three Thousand Dollars (\$73,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro rata of 1 percent per month from and after May 12, 2010.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

CORNFIELD ADDITION

Lots 1 through 3, Block 1

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 through 3, Block 1 CORNFIELD ADDITION shall each pay 1/3 of the total cost of the improvement district.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot or parcel and shall be in addition to the assessment for other improvements.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 26th day October, 2010.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

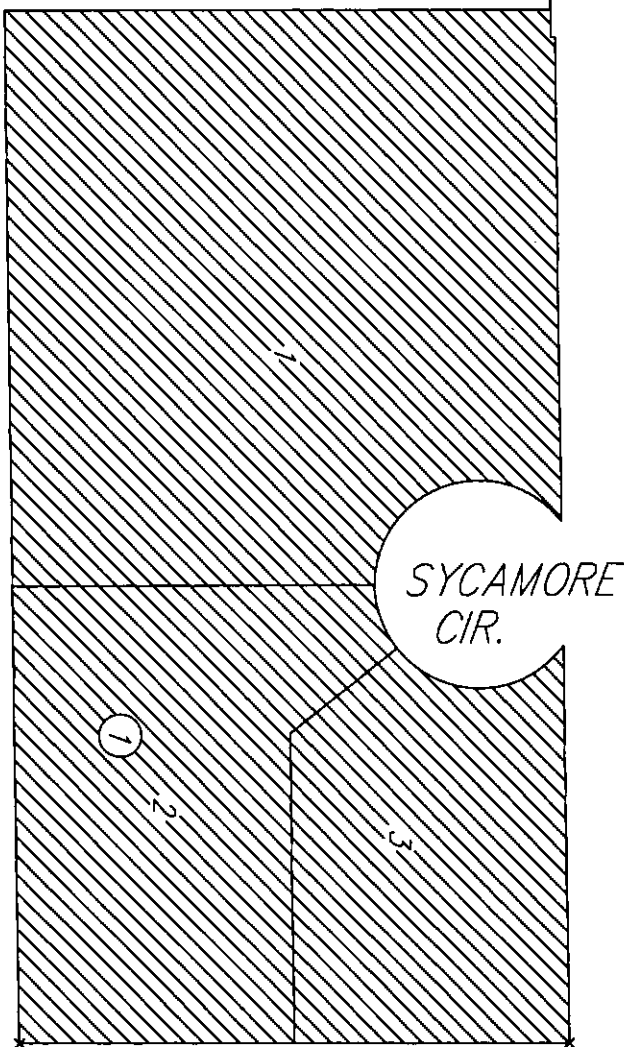
GARY E. REBENSTORF DIRECTOR OF LAW

CORNFIELD ADDITION



SENECA

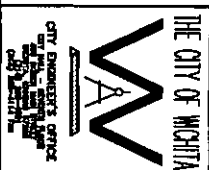
55TH ST. S.



PROPOSED IMPROVEMENT DISTRICT



(ACTUAL ALIGNMENT TO BE
DETERMINED BY DESIGN ENGINEER)



RECEIVED

SEP 15 '10

CITY CLERK OFFICE

PAVING PETITION

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

CORNFIELD ADDITION

472-84871

Lots 1 - 3, Block 1

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended, as follows:

- (a) That there be constructed pavement on **SYCAMORE CIR.**, from the south line of 51ST ST. S. to and including cul-de-sac.

That said pavement between aforesaid limits be constructed with plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas. Drainage to be installed where necessary.

- (b) That the estimated and probable cost of the foregoing improvement being Seventy Three Thousand Dollars (\$73,000.00), exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro rata of 1 percent per month from and after May 12, 2010.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the improvement for which the

improvement district shall be liable shall be on a fractional basis:

That the following lots shall each pay 1/3 of the total cost of the improvement district:

CORNFIELD ADDITION

Lots 1 - 3, Block 1

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION

SIGNATURE

DATE

CORNFIELD ADDITION

Lots 1 - 3, Block 1

John E. Elliott 9-14-10
Ellis A. Elliott 9-14-10

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief.

B. L. Morris
Name B. L. Morris

PW - ENGINEERING
Address

4548
Telephone Number

Sworn to and subscribed before me this 15 day of September 2010.

John Edwards
Deputy City Clerk

City of Wichita
City Council Meeting
October 26, 2010

TO: Mayor and City Council

SUBJECT: Petition to construct a Water Distribution System to serve part of Lot 2, Block 11, Parkwilde Addition (South of St. Louis, east of Young) (District IV)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Approve the petition.

Background: The petition has been signed by two property owners representing 100% of the improvement district.

Analysis: The project will extend water service to an existing home located on the south side of St. Louis Street, east of Young.

Financial Considerations: The petition totals \$6,118. The funding source is special assessments.

Goal Impact: This project addresses the Efficient Infrastructure goal by extending a waterline to an existing home.

Legal Considerations: The petition and resolution have been approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council approve the petition, adopt the resolution and authorize the necessary signatures.

Attachments: Map, CIP sheet, petition and resolution.

**CAPITAL IMPROVEMENT
PROJECT AUTHORIZATION
CITY OF WICHITA**

USK

To Initiate Project

To Revise Project

1. Prepare in triplicate.
2. Send original & 2 copies to budget.
3. City Manager to sign all copies.
4. File original w/ initiating resolution in City Clerk.
5. Return 2nd copy to initiating department.
6. Send 3rd copy to Controller.

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location	
Public Works	Eng	9/14/2010	Water Distribution System in Parkside Addition	
5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date	
NI-200424		2010		
9. Estimated Start Date As Required	10. Estimated Completion Date As Required	11. Project Revised		
12. Project Cost Estimate:			12A.	
ITEM	CO	SA	Water Utility	TOTAL
Right of Way				
Paving, grading & curbs.				
Bridge & Culverts				
Drainage				
Sanitary Sewer				
Sidewalk				
Water		\$6,118		\$6,118
Multi-Use Path				
Totals		\$6,118		\$6,118
Total CIP Amount Budgeted				
Total Prelim. Estimate				

13. Recommendation:

Approve the Petition and adopt the Resolution

Division Head	Department Head	Budget Officer
		City Manager
		Date

	Yes	No
Platting Required	_____	_____
Lot Split	_____	_____
Petition	A	_____
Ordered by WCC	_____	_____

Remarks:

100% Petition

*Water Utility

418 91161

RESOLUTION NO. 10-276

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90497 (SOUTH OF ST. LOUIS, EAST OF YOUNG) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90497 (SOUTH OF ST. LOUIS, EAST OF YOUNG) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Water Distribution System Number 448-90497 (south of St. Louis, east of Young).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Six Thousand Dollars (\$6,000) exclusive of the cost of interest on borrowed money, with 100 percent of the total cost payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after September 1, 2010, exclusive of the costs of temporary financing.

That, in accordance with the provisions of K.S.A. 12-6a19, a benefit fee be assessed against the improvement district with respect to the improvement district's share of the cost of the existing water main, such benefit fee to be in the amount of One Hundred Eighteen Dollars (\$118).

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

PARKWILDE ADDITION

West 75 Feet East 150 Feet North 1/2 Lot 2, Block 11

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a square foot basis.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 26th day of October, 2010.

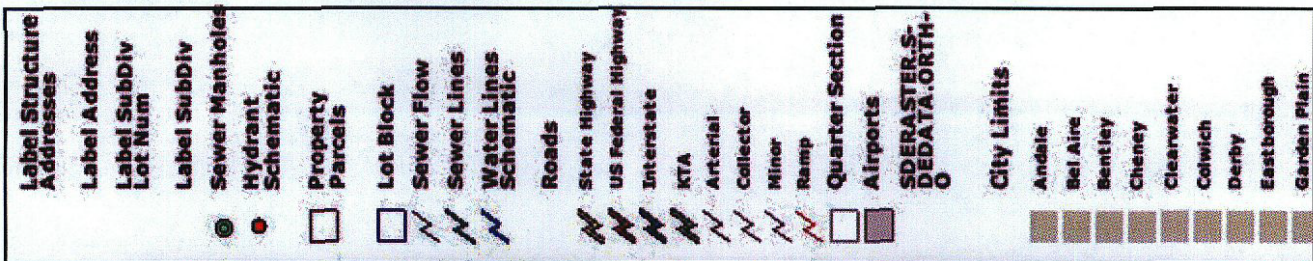
CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK
(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF DIRECTOR OF LAW



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

RECEIVED

SEP 07 '10

CITY CLERK OFFICE

WATER DISTRIBUTION SYSTEM PETITION

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

448-90497

Parkwilde Addition

West 75 Feet East 150 Feet North ½ Lot 2, Block 11

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended:

- (a) That there be constructed a water distribution system, including necessary water mains, pipes, valves, hydrants, and appurtenances to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.
- (b) That the estimated and probable cost of the foregoing improvements being **Six Thousand Dollars (\$6,000)** exclusive of the cost of interest on borrowed money, with **100%** percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of 1 percent per month from and after **September 1, 2010**.
- (c) That, in accordance with the provisions of K.S.A. 12-6a19, a benefit fee be assessed against the improvement district with respect to the improvement district's share of the cost of the existing water main, such benefit fee to be in the amount of **One Hundred Eighteen Dollars (\$118)**
- (d) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction

does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (e) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a **Square Foot** basis:

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature in order to form one public improvement project.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
Parkwilde Addition		
W 75 FT E 150 FT N1/2 LOT 2, BLOCK 11	FLEETWOOD, DORIS & SHIRLEY WARREN	
	<i>Shirley Warren</i> <i>Doris Fleetwood</i>	9/7/10 9-7-10

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the presence of one of the resident owners whose signature appears on the petition.

Kenneth Heeltroer
Name

802 W. Clara
Address

316-945-0309
Telephone Number

Sworn to and subscribed before me this 7th day of Sept, 2010.



Deborah D. Adcock
Deputy City Clerk

City of Wichita
City Council Meeting
October 26, 2010

TO: Mayor and City Council

SUBJECT: Community Events – Inspire Hope Run
(District II)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure, the event sponsor, Clark Ensz of Clark Ensz, Inc., is coordinating with staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Inspire Hope Run November 7, 2010 3:00 pm – 5:00pm

- § 13th Street North from Webb Road to Beech Park entrance. East bound, curb side lane.
- § Webb Road from Beech Park entrance to 13th Street North. North bound, curb side lane.

The event sponsor will arrange to remove the blockades as necessary to allow emergency vehicle access during entire designated time period. The blockades will be removed immediately upon completion of the event.

Financial Consideration: The event sponsor is responsible for all costs associated with special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: None

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department. (3) Certificate of Liability Insurance on file with the Community Events Coordinator.

City of Wichita
City Council Meeting
October 26, 2010

TO: Mayor and City Council

SUBJECT: Community Events – 19th Annual Wichita Frostbite Regatta
(District VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closure.

Background: In accordance with the Community Events procedure, the event sponsor, Pamela Wood, Wichita Rowing Association, is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Frostbite Regatta November 7, 2010 6:30 am – 6:00 pm, Riverside Park

- Nims Street Bridge, Murdock Street to Ralph Wulz Riverside Tennis Center driveway.

The event sponsor will arrange to remove the blockades as necessary to allow emergency vehicle access during entire designated time period. The blockades will be removed immediately upon completion of the event.

Financial Consideration: The event sponsor is responsible for all costs associated with special event

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: None

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Certificate of Liability Insurance on file with the Community Events Coordinator.

CITY OF WICHITA
City Council Meeting
October 26, 2010

TO: Mayor and City Council Members

SUBJECT: Lease of City-owned Parking Spaces at Southwest Corner of 3rd Street and Main Street to General Services Administration (District VI)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the lease agreement.

Background: The General Services Administration (GSA) has leased parking spaces in the City-owned parking lot at the southwest corner of 3rd Street and Main Street for federal employees since the City acquired the lot in 1999. Prior leases have had a one-year term. The GSA has requested that the lease term be extended to five years. To this end, a new lease has been drafted. The lot has 194 spaces and is leased to the public on both a monthly and hourly basis.

Analysis: Currently the GSA pays \$33 per month per space. The number of spaces has varied from 82 to 63. The proposed lease is for 67 spaces at a monthly rate of \$37. This rate will increase 3% per year. This rate is comparable to what is being charged other users who lease a block of spaces in the lot. The lease allows the GSA to cancel the lease upon 60 days notice after the first year. The City may cancel the lease upon 180 days notice after the first year. The lease term will run from December 1, 2010 to November 30, 2015.

Financial Considerations: The City will receive lease revenue to offset operating costs associated with the operation of this facility.

Goal Impact: This lease supports efficient infrastructure by maximizing the utilization of a City-owned asset and providing parking for another governmental agency.

Legal Considerations: The Law Department has approved the lease agreement as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the lease agreement and 2) Authorize all necessary signatures.

Attachments: Lease Agreement, Aerial

U.S. GOVERNMENT LEASE FOR REAL PROPERTY
(Short Form)

1. LEASE NUMBER
GS-06P-01038

PART I - SOLICITATION/DESCRIPTION OF REQUIREMENTS (To be completed by Government)

A. REQUIREMENTS

- 2. The Government of the United States of America is seeking to lease approximately 67 parking spaces located in Wichita, Kansas for occupancy not later than December 1, 2010 for a term of 5 years / 1 years firm, expiring on November 30, 2015.**
- 3. INITIAL OFFERS ARE DUE ON OR BEFORE CLOSE OF BUSINESS June 1, 2010.**

B. STANDARD CONDITIONS AND REQUIREMENTS

4. The following standard conditions and requirements shall apply to any premises offered for lease to the UNITED STATES OF AMERICA (the GOVERNMENT):

- a. Space offered must be in a quality building of sound and substantial construction meeting the Government's requirements for the intended use.
- b. The Lessor shall provide a valid Certificate of Occupancy for the intended use of the Government and shall meet, maintain, and operate the parking lot in conformance with all applicable current (as of the date of this solicitation) codes and ordinances.
- c. Offered space shall meet or be upgraded to meet the applicable egress requirements in National Fire Protection Association (NFPA) 101, *Life Safety Code* or an alternative approach or method for achieving a level of safety deemed equivalent and acceptable by the Government. Offered space located below-grade, including parking garage areas, and all areas referred to as "hazardous areas" (defined in NFPA 101) (including non-Government areas), shall be protected by an automatic sprinkler system or an equivalent level of safety.
- d. The leased space shall be accessible to persons with disabilities in accordance with appendices C and D of 36 CFR Part 1191 (ABA Chapters 1 and 2 and Chapters 3 through 10 of the ADA-ABA Accessibility Guidelines).
- e. The leased space shall be free of all asbestos containing materials, except undamaged asbestos flooring in the space or undamaged boiler or pipe insulation outside the space, in which case an asbestos management program conforming to Environmental Protection Agency guidance shall be implemented. The space shall be free of other hazardous materials and in compliance with applicable Federal, State, and local environmental laws and regulations.
- f. Services, utilities, and maintenance will be provided daily, except Saturday, Sunday, and Federal holidays. The Government shall have access to the leased space at all times without additional payment.
- g. The Lessor shall complete any necessary alterations within 30 days after receipt of approved layout drawings.
- h. The Offeror must have an active registration in the Central Contractor Registration (CCR) System (via the Internet at <http://www.ccr.gov>) prior to lease award and throughout the life of the lease. To remain active, the Lessor must update or renew its registration annually. The Government will not process rent payments to Lessors without an active CCR Registration. The Government will recognize no change of ownership of the leased premises until the new owner registers in the CCR system.

5. SERVICES AND UTILITIES (To be provided by Lessor as part of rent)

- | | | | | |
|--|---|---|--|---|
| <input type="checkbox"/> HEAT | <input checked="" type="checkbox"/> TRASH REMOVAL | <input type="checkbox"/> ELEVATOR SERVICE | <input type="checkbox"/> INITIAL & REPLACEMENT LAMPS, TUBES & BALLASTS | <input checked="" type="checkbox"/> OTHER (Specify below) |
| <input type="checkbox"/> ELECTRICITY | <input type="checkbox"/> CHILLED DRINKING WATER | <input type="checkbox"/> WINDOW WASHING | <input type="checkbox"/> PAINTING FREQUENCY | <u>Lawn Care</u> |
| <input type="checkbox"/> POWER (Special Equip.) | <input type="checkbox"/> AIR CONDITIONING | Frequency | Space | |
| <input type="checkbox"/> WATER (Hot & Cold) | <input type="checkbox"/> TOILET SUPPLIES | <input type="checkbox"/> CARPET CLEANING | Public Areas: | |
| <input checked="" type="checkbox"/> SNOW REMOVAL | <input checked="" type="checkbox"/> JANITORIAL CLEANING | Frequency: | | |

6. OTHER REQUIREMENTS

The Lessor shall maintain the leased premises in a clean condition and shall provide supplies and equipment for the term of the lease. The following schedule describes the level of services intended. Performance will be based on the Contracting Officer's evaluation of results, not the frequency or method of performance.

- 1. Daily. Dispose of all trash and garbage within or around the parking area.
- 2. Weekly. Landscape maintenance shall be performed during the growing season at not less than a weekly cycle and shall consist of watering, weeding, mowing, and policing the area to keep it free of debris. All mowing must be completed before or after normal business hours which consist of 8 a.m. to 5 p.m.
- 3. As Required. The Lessor shall remove snow and ice before the normal business hours and continue throughout the day to prevent a slip hazard. Chemicals and sand shall be used to reduce safety hazards due to ice and snow. The Lessor shall ensure there is an adequate supply of chemicals and sand on site or readily available to cover unexpected snow and ice occurrences. When snow is plowed onsite, the Lessor will ensure the contractor puts the snow in an area that will not hinder operations or block cars from leaving or entering the parking area.

7. NOTE: All offers are subject to the terms and conditions outlined above, and elsewhere in this solicitation, including the Government's General Clauses and Representations and Certifications.

8. BASIS OF AWARD

- ☒ THE ACCEPTABLE OFFER WITH THE LOWEST PRICE PER PARKING SPACE.
- ☐ OFFER MOST ADVANTAGEOUS TO THE GOVERNMENT, WITH THE FOLLOWING EVALUATION FACTORS BEING
 - ☐ SIGNIFICANTLY MORE IMPORTANT THAN PRICE
 - ☐ APPROXIMATELY EQUAL TO PRICE
 - ☐ SIGNIFICANTLY LESS IMPORTANT THAN PRICE
 - ☐ (Listed in descending order, unless stated otherwise):

Initials: _____ & _____
Lessor Government

PART II - OFFER (To be completed by Offeror/Owner and remain open until lease award)

A. LOCATION AND DESCRIPTION OF PREMISES OFFERED FOR LEASE BY GOVERNMENT

1. NAME AND ADDRESS OF BUILDING (Include ZIP Code) Southwest Corner of 3 rd Street and North Main Wichita, Kansas 67202	2. LOCATION(S) IN BUILDING	
	a. FLOOR(S) N/A	b. ROOM NUMBER(S) N/A
	c. SPACES 67 Parking Spaces Common Area Factor N/A	d. TYPE <input type="checkbox"/> GENERAL OFFICE (300 USF) <input checked="" type="checkbox"/> OTHER (Specify) <input type="checkbox"/> WAREHOUSE 67 Parking Spaces

B. TERM

3. To have and to hold, for the term commencing on December 1, 2010 and continuing through November 30, 2015 inclusive. The Government may terminate this lease in whole or in part at any time after November 30, 2011, by giving at least 60 days notice in writing to the Lessor. No rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

C. RENTAL

4. Rent shall be payable in arrears and will be due on the first workday of each month. When the date for commencement of the lease falls after the 15th day of the month, the initial rental payment shall be due on the first workday of the second month following the commencement date. Rent for a period of less than a month shall be prorated.

5. AMOUNT OF ANNUAL RENT Year 1:\$29,748.00 Year 2:\$30,640.44 Year 3:\$31,559.65 Year 4: \$32,506.44 Year 5:\$33,481.64	7. HVAC OVERTIME RATE PER HOUR N/A	8. ELECTRONIC FUNDS TRANSFER PAYMENT SHALL BE MADE TO (Name and Address) The City of Wichita 455 North Main Wichita, Kansas 67202
6. RATE PER MONTH Year 1:\$2,479.00 Year 2:\$2,553.37 Year 3:\$2,629.97 Year 4:\$2,708.87 Year 5:\$2,790.14		


9a. NAME AND ADDRESS OF OWNER (Include ZIP code. If requested by the Government and the owner is a partnership or joint venture, list all General Partners, using a separate sheet, if necessary.)
The City of Wichita, 455 North Main, Wichita, Kansas 67202

9b. TELEPHONE NUMBER OF OWNER 316-268-4237	10. TYPE OF INTEREST IN PROPERTY OF PERSON SIGNING <input type="checkbox"/> OWNER <input checked="" type="checkbox"/> AUTHORIZED AGENT <input type="checkbox"/> OTHER (Specify)		
11a. NAME OF OWNER OR AUTHORIZED AGENT (Type or Print) Carl Brewer		11b. TITLE OF PERSON SIGNING Mayor	
11c. SIGNATURE OF OWNER OR AUTHORIZED AGENT		11d. DATE	

ATTEST:

Approved as to Form:

Karen Sublett, City Clerk


Gary E. Rebenstorf, Director of Law

Initials: _____ & _____
Lessor Government

LEASE NO. GS-06P 01038

PART III - AWARD (To be completed by Government)

1. Your offer is hereby accepted. This award consummates the lease which consists of the following attached documents: (a) this GSA Form 3626, (b) Representations and Certifications, (c) the Government's General Clauses, and (d) the following changes or additions made or agreed to by you:

- ◆ The rent will not include annual escalation for services.
- ◆ The rent will not be subject to tax adjustments.
- ◆ Lessee shall be liable for all taxes levied against personal property, furniture, or fixtures placed by Lessee in the demised premises. If any such taxes for which Lessee is liable are levied or assessed against the Lessor, or Lessor's property, or if the assessed value of the Lessor's property is increased by inclusion of such personal property of the Lessee, the Lessee shall pay all such taxes within twenty (20) days from the date of a demand notice from the Lessor. If Lessee's use of the property causes ad valorem taxes to be levied against the leased premises, Lessee shall be responsible for payment of all such ad valorem taxes. Lessee shall pay all such taxes within twenty (20) days from the date of a demand notice from the Lessor.
- ◆ The Government may, upon reasonable notice, direct the Lessor to initiate a tax appeal, or the Government may elect to contest the assessed valuation on its own behalf or jointly on behalf of Government and the Lessor. If the Government elects to contest the assessed valuation on its own behalf or on behalf of the Government and the Lessor, the Lessor shall cooperate fully with this effort, including, without limitation, furnishing to the Government information necessary to contest the assessed valuation in accordance with the filing requirements of the Taxing Authority, executing documents, providing documentary and testimonial evidence, and verifying the accuracy and completeness of records. If the Lessor initiates an appeal at the direction of the Government, the Government shall have the right to approve the selection of counsel who shall represent the Lessor with regard to such appeal, which approval shall not be unreasonably withheld, conditioned or delayed, and the Lessor shall be entitled to a credit in the amount of its reasonable expenses in pursuing the appeal.
- ◆ The Lessor may terminate this lease in whole or in part at any time after November 30, 2011, by giving at least 180 days notice in writing to the Government.

2. THIS DOCUMENT IS NOT BINDING ON THE GOVERNMENT OF THE UNITED STATES OF AMERICA UNLESS SIGNED BELOW BY AUTHORIZED CONTRACTING OFFICER.

3a. NAME OF CONTRACTING OFFICER (Type or Print)

Emily M. Syrett

3b. SIGNATURE OF CONTRACTING OFFICER

3c. DATE

Initials: _____ & _____
Lessor Government

LEASE NO. GS-06P 01038

GENERAL CLAUSES
(Simplified Leases)
(Acquisition of Leasehold Interests in Real Property for Leases Up to \$100,000 Net Annual Rent)

1. The Government reserves the right, at any time after the lease is signed and during the term of the lease, to inspect the leased premises and all other areas of the building to which access is necessary to ensure a safe and healthy work environment for the Government tenants and the Lessor's performance under this lease.
2. If the building is partially or totally destroyed or damaged by fire or other casualty so that the leased space is untenable as determined by the Government, the Government may terminate the lease upon 15 calendar days written notice to the Lessor and no further rental will be due.
3. The Lessor shall maintain the demised premises, including the building, building systems, and all equipment, fixtures, and appurtenances furnished by the Lessor under this lease, in good repair and tenantable condition. Upon request of the Contracting Officer, the Lessor shall provide written documentation that building systems have been maintained, tested, and are operational.
4. In the event the Lessor fails to perform any service, to provide any item, or meet any requirement of this lease, the Government may perform the service, provide the item, or meet the requirement, either directly or through a contract. The Government may deduct any costs incurred for the service or item, including administrative costs, from rental payments.

5. 52.252-2 CLAUSES INCORPORATED BY REFERENCE (VARIATION) (DEC 2003)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make the full text available, or the full text may be found as GSA Form 3517C at <http://www.gsa.gov/leasingform>.

6. The following clauses are incorporated by reference:

- | | |
|-----------------|--|
| GSAR 552-203-5 | COVENANT AGAINST CONTINGENT FEES (FEB 1990)
(Applicable to leases over \$100,000.) |
| GSAR 552-203-70 | PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEP 1999)
(Applicable to leases over \$100,000.) |
| FAR 52.204-7 | CENTRAL CONTRACTOR REGISTRATION (OCT 2003) (VARIATION) |
| FAR 52.209-6 | PROTECTING THE GOVERNMENT'S INTEREST WHEN
SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED,
OR PROPOSED FOR DEBARMENT (JAN 2005)
(Applicable to leases over \$25,000.) |
| FAR 52.219-9 | SMALL BUSINESS SUBCONTRACTING PLAN (JUL 2005)
(Applicable to leases over \$500,000.) |
| FAR 52.219-16 | LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (JAN 1999)
(Applicable to leases over \$500,000.) |
| GSAR 552.219-72 | PREPARATION, SUBMISSION, AND NEGOTIATION OF
SUBCONTRACTING PLANS (JUN 2005)
(Applicable to leases over \$500,000 if solicitation requires submission of the
subcontracting plan with initial offers.) |
| GSAR 552.219-73 | GOALS FOR SUBCONTRACTING PLAN (JUN 2005)
(Applicable to leases over \$500,000 if solicitation does not require
submission of the subcontracting plan with initial offers.) |

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INITIALS: _____ & _____
LESSOR GOVERNMENT

GSA FORM 3517A PAGE 1 (REV 11/05)

FAR 52.222-26	EQUAL OPPORTUNITY (APR 2002) (Applicable to leases over \$10,000.)
FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (FEB 1999) (Applicable to leases over \$10,000.)
FAR 52.222-35	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001) (Applicable to leases over \$25,000.)
FAR 52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998) (Applicable to leases over \$10,000.)
FAR 52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001) (Applicable to leases over \$25,000.)
FAR 52.232-23	ASSIGNMENT OF CLAIMS (SEP 1999) (Applicable to leases over \$2,500.)
GSAR 552.232-75	PROMPT PAYMENT (SEP 1999)
GSAR 552.232-76	ELECTRONIC FUNDS TRANSFER PAYMENT (MAR 2000) (VARIATION)
FAR 52.233-1	DISPUTES (JUL 2002)
FAR 52.215-10	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997) (Applicable when cost or pricing data are required for work or services over \$500,000.)
FAR 52.215-12	SUBCONTRACTOR COST OR PRICING DATA (OCT 1997) (Applicable when the clause at FAR 52.215-10 is applicable.)

The information collection requirements contained in this solicitation/contract, that are not required by regulation, have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned the OMB Control No. 3090-0163.

LEASE NO. GS-06P **01038**

INITIALS: _____ & _____
LESSOR GOVERNMENT

GSA FORM 3517A PAGE 2 (REV 11/05)

REPRESENTATIONS AND CERTIFICATIONS (Short Form) (Simplified Acquisition of Leasehold Interests in Real Property for Leases Up to \$100,000 Annual Rent)	Solicitation Number	Dated
--	---------------------	-------

Complete appropriate boxes, sign the form, and attach to offer.

The Offeror makes the following Representations and Certifications. NOTE: The "Offeror," as used on this form, is the owner of the property offered, not an individual or agent representing the owner.

1. SMALL BUSINESS REPRESENTATION (JAN 2007)

- (a) (1) The North American Industry Classification System (NAICS) code for this acquisition is 531190.
- (2) The small business size standard is \$19.0 Million in annual average gross revenue of the concern for the last 3 fiscal years.
- (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) *Representations.*

- (1) The Offeror represents as part of its offer that it ☐ is, ☒ is not a small business concern.
- (2) [Complete only if the Offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The Offeror represents, for general statistical purposes, that it ☐ is, ☐ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.
- (3) [Complete only if the Offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The Offeror represents as part of its offer that it ☐ is, ☐ is not a women-owned small business concern.
- (4) [Complete only if the Offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The Offeror represents as part of its offer that it ☐ is, ☐ is not a veteran-owned small business concern.
- (5) [Complete only if the Offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.] The Offeror represents as part of its offer that it ☐ is, ☐ is not a service-disabled veteran-owned small business concern.
- (6) [Complete only if the Offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The Offeror represents, as part of its offer, that—
- (i) It ☐ is, ☐ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and
- (ii) It ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The Offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

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INITIALS: _____ & _____
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2. 52.222-22 - PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

(Applicable to leases over \$10,000.)

The Offeror represents that—

- (a) It ☒ has, ☐ has not participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation;
- (b) It ☒ has, ☐ has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards. (Approved by OMB under Control Number 1215-0072.)

3. 52.222-25 - AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

(Applicable to leases over \$10,000 and which include the clause at FAR 52.222-26, Equal Opportunity.)

The Offeror represents that—

- (a) It ☒ has developed and has on file, ☐ has not developed and does not have on file, at each establishment affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or
- (b) It ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor. (Approved by OMB under Control Number 1215-0072.)

4. 52.203-11 - CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2005)

(Applicable to leases over \$100,000.)

- (a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The Offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989, —
 - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract;
 - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
 - (3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

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INITIALS: _____ & _____
LESSOR GOVERNMENT

GSA FORM 3518A PAGE 2 (REV 1/07)

5. 52.204-3 - TAXPAYER IDENTIFICATION (OCT 1998)

(a) Definitions.

"Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Offeror is a member.

"Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All Offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the Offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the Offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the Offeror's TIN.

(d) Taxpayer Identification Number (TIN).

☐ TIN: 48-6000653
☐ TIN has been applied for.
☐ TIN is not required because:
☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
☐ Offeror is an agency or instrumentality of a foreign government;
☐ Offeror is an agency or instrumentality of the Federal government;

(e) Type of organization.

<input type="checkbox"/> Sole proprietorship;	<input checked="" type="checkbox"/> Government entity (Federal, State, or local);
<input type="checkbox"/> Partnership;	<input type="checkbox"/> Foreign government;
<input type="checkbox"/> Corporate entity (not tax-exempt);	<input type="checkbox"/> International organization per 26 CFR 1.6049-4;
<input type="checkbox"/> Corporate entity (tax-exempt);	<input type="checkbox"/> Other _____

(f) Common Parent.

☒ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

☐ Name and TIN of common parent:

Name _____

TIN _____

6. 52.204-6 - Data Universal Numbering System (DUNS) Number (OCT 2003)

(a) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS number or "DUNS+4" that identifies the Offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet, Inc. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the Offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11) for the same parent concern.

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INITIALS: _____ & _____
LESSOR GOVERNMENT

(b) If the Offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

- (1) An Offeror may obtain a DUNS number—
- (i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or
 - (ii) If located outside the United States, by contacting the local Dun and Bradstreet office.
- (2) The Offeror should be prepared to provide the following information:
- (i) Company legal business name.
 - (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
 - (iii) Company physical street address, city, state and zip code.
 - (iv) Company mailing address, city, state and zip code (if separate from physical).
 - (v) Company telephone number.
 - (vi) Date the company was started.
 - (vii) Number of employees at your location.
 - (viii) Chief executive officer/key manager.
 - (ix) Line of business (industry).
 - (x) Company Headquarters name and address (reporting relationship within your entity).

7. DUNS NUMBER (JUN 2004)

Notwithstanding the above instructions, in addition to inserting the DUNS Number on the offer cover page, the Offeror shall also provide its DUNS Number as part of this submission:

DUNS # 043063460

8. CENTRAL CONTRACTOR REGISTRATION (JAN 2007)

The Central Contractor Registration (CCR) System is a centrally located, searchable database which assists in the development, maintenance, and provision of sources for future procurements. The Offeror must be registered in the CCR prior to lease award. The Offeror shall register via the Internet at <http://www.ccr.gov>. To remain active, the Offeror/Lessor is required to update or renew its registration annually.

- ☐ Registration Active and Copy Attached
- ☐ Will Activate Registration and Submit Copy to the Government Prior to Award

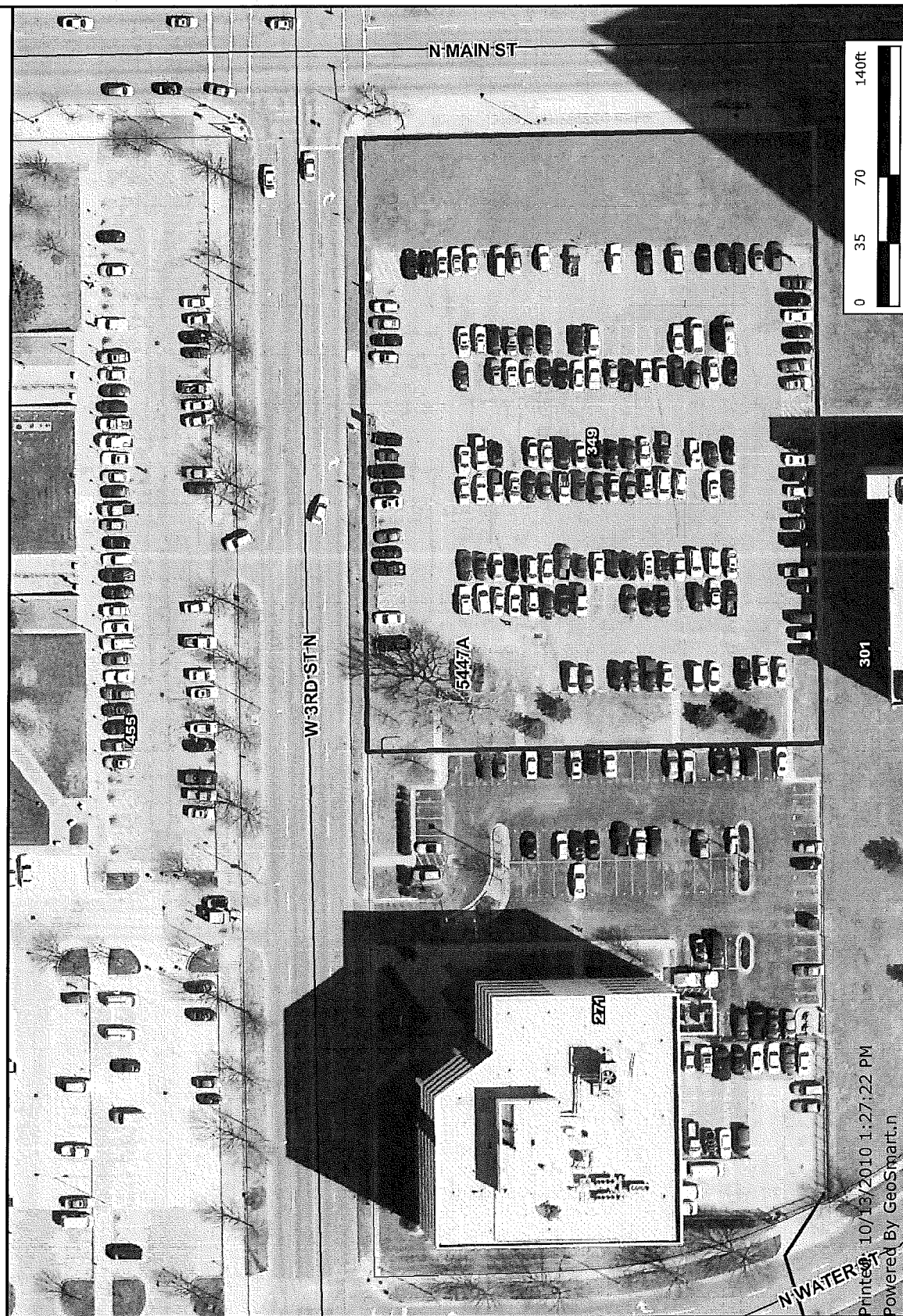
OFFEROR OR AUTHORIZED REPRESENTATIVE	NAME, ADDRESS (INCLUDING ZIP CODE)	TELEPHONE NUMBER
	NAME Carl Brewer, Mayor STREET 455 North Main CITY, STATE, ZIP Wichita, Ks 67202 _____ Signature	(316) 268-4237 _____ Date

LEASE NO. GS-06P 01038

INITIALS: _____ & _____
LESSOR GOVERNMENT



Parking Lot - 3rd and Main



- ☐ Identified Features
- ☐ Property Parcels
- ☒ Sewer Lines
- ☒ Roads
- ☒ State Highway
- ☒ US Federal Highway
- ☒ Interstate
- ☒ KTA
- ☒ Arterial
- ☒ Collector
- ☒ Minor
- ☒ Ramp
- ☒ Railroads
- ☒ Quarter Section
- ☒ Waterways
- ☒ Streams
- ☒ Parks
- ☒ Airports
- ☒ SDEASTER.S-DEDATA.ORTH-01FT
- ☒ SDEASTER.S-DEDATA.ORTH-0
- ☒ City Limits
- ☒ Andale
- ☒ Bel Aire
- ☒ Bentley
- ☒ Cheney
- ☒ Clearwater
- ☒ Colwich
- ☒ Derby
- ☒ Eastborough
- ☒ Garden Plain
- ☒ Goodland
- ☒ Haysville
- ☒ Kechi
- ☒ Maize



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



City of Wichita
City Council Meeting
October 26, 2010

TO: Mayor and City Council

SUBJECT: Zebra Mussel Control Design Build Contract (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the agreement.

Background: In 2006, the Wichita Water Utilities completed a study of possible measures to control the infestation of zebra mussels in Cheney Reservoir, which supplies over 60 percent of the City's water. The engineering firm AECOM was retained by the City to conduct a zebra mussel control design study. The purpose of the study was to evaluate and recommend the most efficient and effective zebra mussel control strategy for the intake piping and pumping facilities at Cheney Reservoir. Two technical memorandums titled "Zebra Mussel Control Experience" and "Viable Alternatives and Evaluation" were completed in January and April of 2009, respectively. The Zebra Mussel Control System Design Study Conceptual Design and Final Recommendations Report were completed in December of 2009. On March 9, 2010, the City Council approved the initiation of Capital Improvement Project (CIP) W-13, and authorized the issuance of a Request for Proposal (RFP) for a team (engineer/contractor) to design and construct the Zebra Mussel Control System.

Analysis: The study and reports done for the City by AECOM recommended that the City use a copper ionization process for zebra mussel control versus the alternative sodium hypochlorite chemical feed process. The City selected the copper ionization process (MacroTech) based on its lower net present worth (\$1,925,636), lower life cycle cost and lower environmental risks. Cheney Pump Station will be the first water treatment installation of the MacroTech copper ionization process. This simple process is comprised of two copper plates with an electrical charge which releases copper ions into the water. The level of copper is enough to inhibit eating, breeding, and settling of zebra mussels. This will protect the intake structure, piping systems, and pump station. The ozone process that was constructed for taste and odor control will kill the mussels, and protect the 20 miles of pipeline between Cheney Pump Station and the Water Treatment Plant.

The Request For Proposals for the Design/Build of Zebra Mussel Control System was issued June 18, 2010. On August 9, 2010, the Staff Screening and Selection Committee interviewed MKEC/Wildcat, Burns & McDonnell/CAS, and AECOM/UCI for this work. The Staff Screening and Selection Committee recommended Burns & McDonnell/CAS for the Design/Build of Zebra Mussel Control System based upon their design providing the least amount of disruption to day to day activities, as well as using existing space for equipment. This allows for smaller buildings, which reduces both construction costs and future maintenance costs.

Financial Considerations: The total approved CIP budget is \$2,000,000. The previously approved MacroTech copper ion system was purchased directly from MacroTech at a cost of \$267,828, leaving an available project budget of \$1,732,172. The design/build contract with Burns & McDonnell/CAS in the amount of \$1,370,000 will complete the installation of this project.

Goal Impact: This project addresses the Ensure Efficient Infrastructure goal by providing reliable, compliant and secure utilities.

Legal Considerations: The agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Agreement.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

SUGGESTED FORM OF AGREEMENT BETWEEN OWNER AND DESIGN/BUILDER ON THE BASIS OF A STIPULATED PRICE

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Contract Between Owner and Design/Builder (No. D-700, 2002 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated and a change in one may necessitate a change in the other. The suggested language contained in the Guide to Use of EJCDC Design/Build Documents (No. D-001, 2002 Edition), including guides to preparation of the Request for Proposal, the Proposal Form, and Supplementary Conditions, is also carefully interrelated with the language of this Agreement. The Guide also contains additional comments concerning use of this Agreement.

Note to User

Before entering into this Agreement, it is recommended that the parties determine if applicable Laws and Regulations prohibit or require alterations in the contemplated contractual arrangements and the assignments of responsibilities for a design/build project. Check competitive bidding, contractor licensing, design professional licensing, and professional practice Laws and Regulations, among others.

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EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND DESIGN/BUILDER
ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is by and between The City of Wichita, Kansas (Owner)

and Burns & McDonnell Engineering / CAS Construction, LLC (Design/Builder).

Owner and Design/Builder, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

- 1.01. Design/Builder shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Cheney Reservoir Zebra Mussel Control Project
Cheney, Kansas

ARTICLE 2 - THE PROJECT

- 2.01. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Provide engineering design, labor, materials and equipment for the Cheney Reservoir Zebra Mussel Control Project, generally in conformance with the Design Builders Proposal Dated July 23 2010, and the Contract Documents attached hereto.

- A. Owner has declined to accept the base proposal.
- B. Owner has declined to accept Alternative 1 Proposal.
- C. Owner has declined to accept Alternative 2 Proposal.
- D. Owner has elected to accept Alternative 3 Proposal.
- E. The Owner has indicated a potential interest in the Alternative 4 Proposal. Design Builder will continue to develop this alternative and if the Owner ultimately accepts this alternative, a Change Order modifying the Scope, Price and Schedule of this Agreement will be executed between the parties.

ARTICLE 3 - CONTRACT TIMES

3.02. Days to Achieve Substantial Completion and Final Payment

- A. The Work will be substantially completed within 240 days after the date when the Contract Times commence to run as provided in paragraph 2.02 of the General Conditions, and completed and ready for final payment in accordance with paragraph 13.08 of the General Conditions within 300 days after the date when the Contract Times commence to run.

3.03. Liquidated Damages

- A. Design/Builder and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.02.A above, plus any extensions thereof allowed in accordance with paragraph 11.02 of the General Conditions. The parties also recognize the delays, expenses and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Design/Builder agree that as liquidated damages for delay (but not as a penalty), Design/Builder shall pay

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Owner \$300 for each day that expires after the time specified in paragraph 3.02.A for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Design/Builder shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.02.A for completion and readiness for final payment or any proper extension thereof granted by Owner, Design/Builder shall pay Owner \$300 for each day that expires after the time specified in paragraph 3.02.A for completion and readiness for final payment.

ARTICLE 4 - CONTRACT PRICE

- 4.01. Owner shall pay Design/Builder for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 4.01.A, 4.01.B and 4.01.C below:
- A. For all Work other than Unit Price Work, a Lump Sum of: One million three hundred and seventy thousand Dollars (\$1,370,000)
 - B. Allowances: The lump Sum specified in Paragraph 4.01.A. Includes an allowance of five thousand dollars (\$5,000) for concrete and soils testing during construction.
- 4.02. The factor used to calculate the cost of fee for employees in the direct employ of Design/Builder performing Design Professional Services in accordance with paragraph 10.01.A.1.b of the General Conditions shall be 3.3.

ARTICLE 5 - PAYMENT PROCEDURES

- 5.01. Design/Builder shall submit and Owner will process Applications for Payment in accordance with Article 13 of the General Conditions.
- A. *Progress Payments; Retainage.* Owner shall make progress payments on account of the Contract Price on the basis of Design/Builder's Applications for Payment which are to be submitted on or about the 21st day of each month during performance of the Work as provided in paragraphs 5.01.A.1 and A.2 below. All such payments will be based on the Schedule of Values established in paragraph 2.06.A.3 of the General Conditions
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold in accordance with paragraph 13.03.B of the General Conditions.
 - a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Owner, and if the character and progress of the Work have been satisfactory to Owner, Owner may determine that as long as the character and progress of the Work remain satisfactory to Owner, there will be no additional retainage on account of Work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the remaining Work completed.
 - b. 100 percent of the cost of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 13.02.A of the General Conditions).
 - 2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Design/Builder to 100% percent of the Contract Price less such amounts as Owner may withhold in accordance with paragraph 13.03.B of the General Conditions.
 - B. *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 13.08 of the General Conditions, Owner shall pay the remainder of the Contract Price.

ARTICLE 6 - INTEREST

6.01. Not used.

ARTICLE 7 - DESIGN/BUILDER'S REPRESENTATIONS

7.01. To induce Owner to enter into this Agreement, Design/Builder makes the following representations:

- A. Design/Builder has examined and carefully studied the Contract Documents (including the Addenda) listed in paragraphs 8.01.A through J and the other related data identified in the Request for Proposals but excluding the documents described in paragraph 8.01.K.
- B. Design/Builder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Design/Builder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Design/Builder has carefully studied: (1) reports of explorations and tests of subsurface conditions (if any) at the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been identified or made available by Owner.
- E. Design/Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- F. Design/Builder has correlated the information known to Design/Builder, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- G. Design/Builder has given Owner written notice of all conflicts, errors, ambiguities or discrepancies that Design/Builder has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Design/Builder.
- H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01. The Contract Documents consist of the following:

- A. This Agreement (pages 1 to 8, inclusive);
- B. Performance Bond (pages ____ to ____, inclusive); (To Be Added)
- C. Payment Bond (pages ____ to ____, inclusive); (To Be Added)
- D. Kansas Statutory (Public Works) Bond ____ and consisting of ____ pages; (To Be Added)
- E. Standard General Conditions of the Contract Between Owner and Design/Builder (pages 1 to 28, inclusive);
- F. Supplementary Conditions (pages 1 to,6 inclusive);
- G. Revised Non-Discrimination and Equal Employment Opportunity / Affirmative Action Program Requirements Statement for Contracts or Agreements.
- H. Design/Builder's Proposal; Dated July 23, 2010

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- I. Addenda numbers 1 through NA inclusive;
 - J. Work Description (pages 1 to 8, inclusive);
 - K. Basis of Design Memorandum
 - L. The following, which may be delivered, prepared, or issued after the Effective Date of this Agreement and are not attached hereto:
 - 1. Notice to Proceed;
 - 2. All Work Change Directives, and Change Orders amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04.A of the General Conditions;
 - 3. Specifications as defined in Paragraph 1.01.A.40 of the General Conditions; and
 - 4. Drawings as defined in Paragraph 1.01.A.18 of the General Conditions.
- 8.02. The documents listed in paragraph 8.01 above are attached to this Agreement (except as expressly noted otherwise above).
- 8.03. There are no Contract Documents other than those listed above in this Article 8.
- 8.04. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

- 9.01. The Standard General Conditions of the Contract Between Owner and Design/Builder are referred to herein as the General Conditions.
- 9.02. Terms used in this Agreement will have the meanings indicated in the General Conditions.
- 9.03. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.04. Owner and Design/Builder each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.05. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design/Builder.
- 9.06. **Copper Ion System (CIS).** Owner has selected and pre-purchased the Copper Ion System (CIS) and will furnish CIS to Design / Builder for installation. Design/Builder has not been a participant in the evaluation of this technology or the selection, specification, or purchase of the CIS technology or equipment; Design/Builder's sole obligation is to install the Owner provided equipment for Owner per CIS equipment and systems specifications provided by or through Owner. The Owner acknowledges that neither Owner or Design/Builder has independently tested such CIS technology and equipment, and that the Owner's decision to use CIS technology and selected equipment brings certain risks, and Owner assumes such risks as follows: (1) Design/Builder makes no guarantee,

warranty or representation regarding the efficacy or effectiveness of the technology, the CIS, or the associated equipment, including, but not limited to its application, performance, safety, operation, maintenance, or any intended or hoped for results, such performance risks remain solely with Owner, (2) Owner agrees to waive and release and shall not bring suit against Design Builder for any claims, damages, or liabilities associated with or arising from the CIS, including but not limited to use, application, performance, or non-performance, safety, operation, or maintenance of the CIS, or any claim of environmental damage, loss, impairment, or required remediation, (3) Owner agrees to remain responsible for care and risk of loss (including delivery, storage, security, and handling) of the Owner provided CIS and other Owner provided equipment until such time as the CIS is released and Design / Builder takes custody and control for installation.

IN WITNESS WHEREOF, Owner and Design/Builder have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Design/Builder. All portions of the Contract Documents have been signed, initialed or identified by Owner and Design/Builder.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

OWNER:

The City of Wichita, Kansas

By: _____

[CORPORATE SEAL]

Attest: _____

Address for giving notices:

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

APPROVED AS TO FORM
[Signature]
FOR GRANT E. REBENSTORF
CITY ATTORNEY

DESIGN/BUILDER:

Burns & McDonnell / CAS, LLC

By: James L. Foil P.E. (LLC Executive Committee Member)

[CORPORATE SEAL]

Attest: *[Signature]*

Address for giving notices:

9400 Ward Parkway

Kansas City, Missouri 64114

Engineer License No. or Certificate No.: E-65
(Where applicable)

State: Kansas

Contractor License No.: LICB-2051
(Where applicable)

State: Segwick Co., Kansas

(If Design/Builder is a corporation, attach evidence of authority to sign.)

Designated Representative:

Name: James L. Foil, P.E.

Title: LLC Executive Committee Member

Address: 9400 Ward Parkway

Phone: 816-822-3180

Facsimile: 816-822-3414

**Engineers Joint Documents Committee
Design and Construction Related Documents
Instructions and License Agreement**

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2. Not represent that any of the contract documents you generate from **EJCDC Design and Construction Related Documents** are EJCDC documents unless (i) the document text is used without alteration or (ii) all additions and changes to, and deletions from, the text are clearly shown.

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Term:

The license is effective until terminated. You may terminate it at any time by destroying **EJCDC Design and Construction Related Documents** altogether with all copies, modifications and merged portions in any form. It will also terminate upon conditions set forth elsewhere in this Agreement or if you fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy **EJCDC Design and Construction Related Documents** along with all copies, modifications and merged portions in any form.

Limited Warranty:

EJCDC warrants the CDs and diskettes on which **EJCDC Design and Construction Related Documents** is furnished to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

There is no other warranty of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

EJCDC does not warrant that the functions contained in **EJCDC Design and Construction Related Documents** will meet your requirements or that the operation of **EJCDC Design and Construction Related Documents** will be uninterrupted or error free.

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EJCDC's entire liability and your exclusive remedy shall be:

1. the replacement of any document not meeting EJCDC's "Limited Warranty" which is returned to EJCDC's selling agent with a copy of your receipt, or
2. if EJCDC's selling agent is unable to deliver a replacement CD or diskette which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

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Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

General:

You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
General Counsel
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN/BUILDER

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



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These General Conditions have been prepared for use with either one of the two Agreements between Owner and Design/Builder (Nos. D-520 and D-525, 2002 Editions) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated and a change in one may necessitate a change in the others. The suggested language and instructions contained in the Guide to Use of EJCDC Design/Build Documents (No. D-001, 2002 Edition) is also carefully interrelated with the language of these General Conditions. The Guide also contains comments concerning the use of the General Conditions.

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STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN/BUILDER

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1. *Addenda* – Written or graphic instruments issued prior to the opening of Proposals which clarify, correct or change the Request for Proposals or the Contract Documents.

2. *Agreement* – The written instrument which is evidence of the agreement between Owner and Design/Builder covering the Work.

3. *Application for Payment* – The form which is to be used by Design/Builder in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bonds* – Performance and payment bonds and other instruments of security.

6. *Change Order* – A written order which is signed by Design/Builder and Owner which authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

7. *Claim* – A demand or assertion by Owner or Design/Builder seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a claim.

8. *Conceptual Documents* – The drawings and specifications and/or other graphic or written materials, criteria and information concerning Owner's requirements for the Project, such as design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, including those items enumerated in the

Request for Proposals which show or describe the character and scope of, or relate to, the Work to be performed or furnished and which have been prepared by or for Owner.

9. *Construction* – The result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents.

10. *Construction Subagreement* – A written agreement between Design/Builder and a construction Subcontractor for provision of Construction.

11. *Contract* – The entire and integrated written agreement between Owner and Design/Builder concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents* – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.

13. *Contract Price* – The moneys payable by Owner to Design/Builder for completion of the Work in accordance with the Contract Documents.

14. *Contract Times* – The numbers of days or the dates stated in the Agreement to (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment in accordance with paragraph 13.08.

15. *Design/Builder* – The individual or entity with whom Owner has entered into the Agreement.

16. *Design Subagreement* – A written agreement between Design/Builder and a design professional for provision of Design Professional Services.

17. *Design Professional Services* – Services related to the preparation of Drawings, Specifications, and other design submittals specified by the Contract Documents and required to be performed by licensed design professionals, as well as other services provided by or for licensed design professionals during Bidding/Negotiating, Construction, or Operational phases.

18. *Drawings* – Those portions of the Contract Documents prepared by or for Design/Builder and approved by Owner consisting of drawings, diagrams,

illustrations, schedules and other data which show the scope, extent, and character of the Work.

19. *Effective Date of the Agreement* – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

20. *Field Order* – A written order issued by Owner which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *Hazardous Environmental Condition* – The presence at the Site of Asbestos, Hazardous Waste, PCB's, Petroleum Products or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto on connection with the Work.

22. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

23. *Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

24. *Liens* – Charges, security interests or encumbrances upon real property or personal property.

25. *Milestone* – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

26. *Notice of Award* – The written notice by Owner to the successful proposer stating that upon compliance by the successful proposer with the conditions precedent included therein, within the time specified, Owner will sign and deliver the Agreement.

27. *Notice to Proceed* – A written notice given by Owner to Design/Builder fixing the date on which the Contract Times will commence to run and on which Design/Builder shall start to perform the Work.

28. *Owner* – The individual or entity with whom Design/Builder has entered into the Agreement and for whom the Work is to be performed.

29. *Owner's Consultant* – An individual or entity with whom the Owner may contract to furnish services to Owner with respect to the Project and who is identified as such in the Supplementary Conditions.

30. *Partial Utilization* – Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

31. *PCBs* – Polychlorinated biphenyls.

32. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.

33. *Project* – The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

34. *Proposal* – The documents submitted by Design/Builder in response to the Request for Proposals setting forth the design concepts, proposed prices, and other conditions for the Work to be performed.

35. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Request for Proposals* – The document prepared by or for Owner specifying and describing Owner's objectives and the procedure to be followed in preparing and submitting a Proposal and awarding a contract.

37. *Resident Project Representative* – The authorized representative of Owner who may be assigned to the Site or any part thereof.

38. *Schedule of Values* – A schedule prepared by Design/Builder and acceptable to Owner indicating that portion of the Contract Price to be paid for each major component of the Work.

39. *Site* – Lands or other areas designated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of Design/Builder.

40. *Specifications* – The part of the Contract Documents prepared by or for Design/Builder and approved by Owner consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

41. *Subcontractor* – An individual or entity other than a Supplier having a direct contract with Design/Builder or with any other Subcontractor for the performance of a part of the Work.

42. *Submittal* – A written or graphic document prepared by or for Design/Builder which is required by the Contract Documents to be submitted to Owner by Design/Builder. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, cash flow projections, and Schedules of Values. Submittals other than Drawings and Specifications are not Contract Documents.

43. *Substantial Completion* – The time at which the Work (or a specified part) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions* – The part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with Design/Builder or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Design/Builder or any Subcontractor.

46. *Unit Price Work* – Work to be paid for on the basis of unit prices.

47. *Work* – The entire construction or the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents.

48. *Work Change Directive* – A written directive to Design/Builder, issued on or after the Effective Date of the Agreement and signed by Owner ordering an addition, deletion or revision in the Work, or responding to differing site conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

2. The word "defective," when modifying the word "Construction" refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner's final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.

3. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

4. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.

5. The words "perform" or "provide" when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

6. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design/Builder, "provide" is implied.

7. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

1.02 Terminology

A. Intent of Certain Terms or Adjectives:

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. When Design/Builder delivers the executed Agreements to Owner, Design/Builder shall also deliver to Owner such Bonds as Design/Builder may be required to furnish in accordance with paragraph 5.01.A.

2.02 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement. Unless agreed to in writing by Owner and Design/Builder, the Contract Times will commence to run no later than the ninetieth day after the last day for receipt of the Proposal or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.03 Starting the Work

A. Design/Builder shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.04 Before Starting the Work

A. *Design/Builder's Review of Contract Documents:* Before undertaking each part of the Work, Design/Builder shall carefully study and compare those Contract Documents prepared by Owner and check and verify pertinent figures therein and all applicable field measurements. Design/Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which Design/Builder may discover and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby; however, Design/Builder shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Design/Builder knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design/Builder shall submit the following to Owner for its timely review:

1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. A preliminary schedule of Submittals which will list each required Submittal and the times for submitting, reviewing and processing each Submittal;

3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and

4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

C. *Evidence of Insurance:* Before any Work at the Site is started, Design/Builder and Owner shall each deliver to the other, certificates of insurance as required by paragraph 5.03 which Design/Builder and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.05 Initial Conference

A. Within twenty days after the Contract Times start to run, Design/Builder will arrange a conference attended by Owner and Design/Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in paragraph 2.04.B, procedures for handling Submittals, processing Applications for Payment, maintaining required records, items required pursuant to paragraph 8.01.A.6 and other matters.

2.06 Initial Acceptance of Schedules

A. At least ten days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design/Builder will arrange a conference attended by Design/Builder, Owner and others as appropriate to review for acceptability the schedules submitted in accordance with paragraph 2.04.B. Design/Builder shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Design/Builder until the acceptable schedules are submitted to Owner.

1. The progress schedule will be acceptable to Owner if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on Owner responsibility for the progress schedule, for sequencing, scheduling or progress of the Work nor interfere with nor relieve Design/Builder from Design/Builder's full responsibility therefor.

2. Design/Builder's schedule of Submittals will be acceptable to Owner if it provides a workable

arrangement for reviewing and processing the required Submittals.

3. Design/Builder's Schedule of Values will be acceptable to Owner as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for at no additional cost to Owner.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws or Regulations.

1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the last day for receipt of Proposals except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, code, or instruction of a Supplier shall be effective to change the duties and responsibilities of Owner, Design/Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Resolving Discrepancies

A. In the event of a discrepancy between the Conceptual Documents on the one hand and the Proposal or Drawings or Specifications on the other hand, the Conceptual

Documents will control except when Owner has approved a Submittal pursuant to paragraph 6.17.B.

B. Except as otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

1. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

2. The provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

1. Owner's approval of required Submittals (pursuant to paragraph 6.17.B);

2. A Work Change Directive;

3. A Change Order;

4. A Field Order.

3.05 Reuse of Documents

A. All documents including Drawings and Specifications prepared or furnished by Design/Builder pursuant to this Agreement are for Design/Builder's own use, and Design/Builder shall retain an ownership and property interest therein whether or not the Project is completed. Owner may make and retain copies for information and reference in connection with the use and occupancy of the Project by Owner and others. However, such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse or any continued use after any termination without written verification or adaptation by Design/Builder for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Design/Builder and Owner shall indemnify and hold harmless Design/Builder and Subcontractors from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Design/Builder to further compensation at rates to be agreed upon by Owner and Design/Builder.

3.06 Electronic Data

A. Copies of data furnished by Owner to Design/Builder or Design/Builder to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITIONS

4.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Design/Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site which Design/Builder will have to comply in performing the Work. Unless otherwise provided in the Contract Documents, Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Design/Builder and Owner are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in Owner's furnishing the Site, Design/Builder may make a Claim therefor as provided in Article 9.

B. Upon reasonable written request, Owner shall furnish Design/Builder with a current statement of record legal title and legal description of the lands upon which the Construction is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws or Regulations.

C. Design/Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Differing Site Conditions

A. Design/Builder shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.

B. Owner will investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Design/Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 9.

C. No request by Design/Builder for an equitable adjustment under paragraph 4.02 shall be allowed unless Design/Builder has given the written notice required; provided that the time prescribed in 9.03.A for giving written notice may be extended by Owner.

D. The provisions of this paragraph 4.02 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

4.03 Reference Points

A. Design/Builder shall be responsible for laying out the Work and shall protect and preserve the reference points and property monuments established by Owner pursuant to paragraph 8.01.A.6.e, and shall make no changes or relocations without the prior written approval of Owner. Design/Builder shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 Hazardous Environmental Condition at Site

A. Design/Builder will not be responsible for any Hazardous Environmental Condition encountered at the Site which was not identified in the Contract Documents to be within the scope of the Work. Design/Builder shall be responsible for materials creating a Hazardous Environmental Condition created by any materials brought to the Site by Design/Builder, Subcontractors, Suppliers or anyone else for whom Design/Builder is responsible.

B. If Design/Builder encounters a Hazardous Environmental Condition, Design/Builder shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Construction in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify Owner (and thereafter confirm such notice in writing). Owner shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.

C. Design/Builder shall not be required to resume Construction in connection with such Hazardous Environmental Condition or in any such affected area until after Owner has obtained any required permits related thereto and delivered to Design/Builder written notice (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Construction, or (ii) specifying any special conditions under which such Construction may be resumed safely. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Construction stoppage or such special conditions under which Construction is agreed to be resumed by Design/Builder, either party may make a Claim therefor as provided in Article 9.

D. If after receipt of such special written notice Design/Builder does not agree to resume Construction based on a reasonable belief it is unsafe, or does not agree to resume such Construction under such special conditions, then Owner may order such portion of the Work that is related to such Hazardous Environmental Condition to be deleted from the Work. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Article 9. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

E. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design/Builder, Subcontractors, Suppliers and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Contract Documents to be included in the scope of the Work, and (iii) was not created by Design/Builder or by anyone for whom Design/Builder is responsible. Nothing in this paragraph 4.04.E shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

F. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultant and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such Hazardous Environmental Condition created by Design/Builder or anyone for whom Design/Builder is responsible. Nothing in this paragraph 4.04.F shall obligate Design/Builder to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment and Other Bonds

A. Design/Builder shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Design/Builder's obligations to furnish, provide and pay for Work and related materials under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Design/Builder shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 by the Audit Staff, Bureau of Government Financial Operations, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by Design/Builder is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B and 5.02, Design/Builder shall within twenty days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Design/Builder shall be obtained from surety or insurance companies that are duly licensed or authorized in the

jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 Certificates of Insurance

A. Design/Builder shall deliver to Owner, with copies to each additional insured indicated in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Design/Builder is required to purchase and maintain. Owner shall deliver to Design/Builder, with copies to each additional insured indicated in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Design/Builder or any other additional insured) which Owner is required to purchase and maintain.

5.04 Design/Builder's Liability Insurance

A. Design/Builder shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Design/Builder's performance of the Work and Design/Builder's other obligations under the Contract Documents, whether it is to be performed by Design/Builder, any Subcontractor or Supplier or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefits and other similar employee benefit acts;

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design/Builder's employees;

3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design/Builder's employees;

4. Claims for damages insured by reasonably available personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Design/Builder, or (ii) by any other person for any other reason;

5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by paragraph 5.04.A shall:

1. With respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, (subject to any customary exclusion in respect of professional liability) include as additional insureds Owner and Owner's Consultants and any other persons or entities indicated in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, and employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. Include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. Include completed operations insurance;

4. Include contractual liability insurance covering Design/Builder's indemnity obligations under paragraphs 6.11.A.3 and 6.21;

5. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days' prior written notice has been given to Owner and each other additional insured indicated in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Design/Builder pursuant to paragraph 5.03 will so provide);

6. Remain in effect at least until final payment and at all times thereafter when Design/Builder may be correcting, removing or replacing defective Construction in accordance with paragraphs 12.06 and 12.07; and

7. With respect to completed operations insurance, and any other insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Design/Builder shall furnish Owner and each other additional insured indicated in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 Owner's Liability Insurance

A. In addition to the insurance required to be provided by Design/Builder under paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense

Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Construction at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws or Regulations). This insurance will:

1. Include the interests of Owner, Owner's Consultant, Design/Builder, Subcontractors, and any other individuals or entities indicated in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. Be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Construction, temporary buildings, falsework and all materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws or Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. Include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. Cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Construction, provided that such materials and equipment have been included in an Application for Payment approved by Owner;

5. Allow partial utilization in accordance with paragraph 13.06;

6. Include testing and startup; and

7. Be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner and Design/Builder with thirty days' written notice to each other additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may

be required by the Supplementary Conditions or Laws or Regulations which will include the interests of Owner, Owner's Consultants, Design/Builder, Subcontractors, and any other individuals or entities indicated in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by Owner in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days' prior written notice has been given to Design/Builder and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance to protect the interests of Design/Builder, Subcontractors, Suppliers, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount, will be borne by Design/Builder, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Design/Builder requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Design/Builder by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Design/Builder whether or not such other insurance has been procured by Owner.

5.07 Waiver of Rights

A. Owner and Design/Builder intend that all policies purchased in accordance with paragraph 5.06 will protect Owner, Owner's Consultant, Design/Builder, Subcontractors, Suppliers, and all other individuals or entities indicated in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Design/Builder waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition,

waive all such rights against Owner's Consultant, Subcontractors, Suppliers, and all other individuals or entities indicated in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Design/Builder, Subcontractors, and Suppliers and the officers, directors, employees and agents of any of them for:

1. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property caused by, arising out of or resulting from fire or other peril whether or not insured by Owner; and

2. Loss or damage to the completed Project or any part thereof caused by, arising out of, or resulting from fire or other insured peril or cause or loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to paragraph 13.06, after Substantial Completion pursuant to paragraph 13.05, or after final payment pursuant to paragraph 13.08.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Design/Builder, Subcontractors, Owner's Consultant, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. Owner shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Construction shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the

parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either Owner or Design/Builder has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of their not complying with the Contract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by paragraph 2.04.C. Owner and Design/Builder shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was supposed to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurance

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 13.06, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – DESIGN/BUILDER'S RESPONSIBILITIES

6.01 Design Professional Services

A. *Standard of Care.* The standard of care for Design Professional Services performed or furnished under this Agreement will be the care and skill ordinarily used by members of the engineering profession practicing under similar conditions at the same time and locality.

B. *Preliminary Design Phase.* After the Contract Times commence to run, Design/Builder shall:

1. Consult with Owner to understand Owner's requirements for the Project and review available data;
2. Advise Owner as to the necessity of Owner's providing or obtaining from others additional reports, data, or services of the types provided in paragraph 8.01.A.6.a-g and assist Owner in obtaining such reports, data, or services;
3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Design/Builder with whom consultation is to be undertaken in connection with the Project;
4. Obtain such additional geotechnical and related information which it deems necessary for performance of the Work;
5. On the basis of the Conceptual Documents and Design/Builder's Proposal, prepare preliminary design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project;
6. Furnish the preliminary design documents to and review them with Owner within the times indicated in the schedules described in paragraphs 2.06.A.1 and 2.06.A.2; and
7. Identify any variations in the preliminary design documents from the Contract Documents in accordance with 6.17.B.

C. *Final Design Phase.* After written acceptance by Owner of the preliminary design phase documents Design/Builder shall:

1. On the basis of the accepted Preliminary Design Phase documents, prepare final Drawings showing the scope, extent, and character of the Construction to be performed and furnished by Design/Builder and Specifications (which will be prepared, where appropriate, in general conformance with the sixteen division format of the Construction Specifications Institute);
2. Provide technical criteria, written descriptions and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist Owner in consultations with appropriate authorities;
3. Furnish the above documents, Drawings, and Specifications to and review them with Owner within the

times indicated in the schedules described in paragraphs 2.06.A.1 and 2.06.A.2; and

4. Identify any deviations from other Contract Documents in accordance with paragraph 6.17.B.

6.02 Supervision and Superintendence of Construction

A. Design/Builder shall supervise, inspect and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design/Builder shall be solely responsible for the means, methods, techniques, sequences and procedures of Construction. Design/Builder shall be responsible to see that the completed Construction complies accurately with the Contract Documents and shall keep Owner advised as to the quality and progress of the Construction.

B. At all times during the progress of Construction, the Design/Builder shall assign a competent resident superintendent thereto, who shall not be replaced without written notice to Owner except under extraordinary circumstances. The superintendent will be Design/Builder's representative at the Site and shall have authority to act on behalf of Design/Builder. All communications given to or received from the superintendent shall be binding on Design/Builder.

6.03 Labor, Working Hours

A. Design/Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design/Builder shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Construction at the Site shall be performed during regular working hours, and Design/Builder will not permit overtime work or the performance of Construction on Saturday, Sunday or any legal holiday without Owner's written consent, which will not be unreasonably withheld.

6.04 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, Design/Builder shall furnish or cause to be furnished and assume full responsibility for materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the Work.

B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and

guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If reasonably required by Owner, Design/Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.05 Progress Schedule

A. Design/Builder shall adhere to the progress schedule established in accordance with paragraph 2.06.A as it may be adjusted from time to time as provided below:

1. Design/Builder shall submit to Owner for acceptance proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 11.02. Such adjustments may only be made by a Change Order or .

6.06 Concerning Subcontractors, Suppliers, and Others

A. Design/Builder shall not employ any Subcontractor, Supplier, or other individual or entity against whom Owner may have reasonable objection. Design/Builder shall not be required to employ any Subcontractor, Supplier or other individual or entity to furnish or perform any of the Work against whom Design/Builder has reasonable objection.

B. Design/Builder shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers and other individuals or entities performing or furnishing any of the Work just as Design/Builder is responsible for Design/Builder's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner and any such Subcontractor, Supplier, or other individual or entity, nor shall it create any obligation on the part of Owner to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws or Regulations.

C. Design/Builder shall be solely responsible for scheduling and coordinating Subcontractors, Suppliers and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with Design/Builder.

D. Design/Builder shall require all Subcontractors, Suppliers and such other individuals and entities performing

or furnishing any of the Work to communicate with the Owner through Design/Builder.

E. All Work performed for Design/Builder by a Subcontractor or Supplier will be pursuant to an appropriate Design Subagreement or Construction Subagreement between Design/Builder and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the Design/Builder and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Design/Builder, Owner's Consultant, and all other additional insureds (and their officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Design/Builder will obtain the same.

6.07 Patent Fees and Royalties

A. Design/Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual Documents for use in the performance of the Construction and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Conceptual Documents.

B. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner and Owner's Consultant, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not identified in the Conceptual Documents.

C. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design/Builder and its officers, directors, partners, employees or agents, Subcontractors and Suppliers from and against all claims, costs, losses and damages (including but not limited to

all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device required by the Conceptual Documents.

6.08 Permits

A. Unless otherwise provided in the Contract Documents, Design/Builder shall obtain and pay for all necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Work. Owner shall assist Design/Builder, when necessary, in obtaining such permits, licenses and approvals. Design/Builder shall pay all governmental charges and inspection fees necessary for the performance of the Work, which are applicable on the last day for receipt of Proposals. Design/Builder shall pay all charges of utility owners for connections to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto.

6.09 Laws or Regulations

A. Design/Builder shall give all notices required by and comply with all Laws or Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design/Builder's compliance with any Laws or Regulations.

B. If Design/Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design/Builder shall bear all costs arising therefrom.

C. Changes in Laws or Regulations not known on the date of receipt of Proposals having an effect on the cost or time of performance may be the subject of a change in Contract Price or Contract Times.

6.10 Taxes

A. Design/Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by Design/Builder in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas.

1. Design/Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with

construction equipment or other materials or equipment. Design/Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of Work, Design/Builder shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design/Builder's performance of the Construction.

B. *Removal of Debris.* During the performance of the Construction, Design/Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

C. *Cleaning.* Prior to Substantial Completion, Design/Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design/Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures.* Design/Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design/Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. Design/Builder shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders and Work Change Directives in good order and annotated to show all changes made during performance of the Work. These record documents together with all approved Submittals will be available to Owner for reference. Upon completion of the Work, these record documents and Submittals, including a

reproducible set of record drawings, will be delivered to Owner.

6.13 Safety and Protection

A. Design/Builder shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Design/Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. All persons on the Site or who may be affected by the Work;
2. All Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation, or replacement in the course of construction.

B. Design/Builder shall comply with applicable Laws or Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design/Builder shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Design/Builder, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design/Builder.

D. Design/Builder's duties and responsibilities for safety and for protection of the construction shall continue until such time as all the Work is completed and Owner has issued a notice to Design/Builder in accordance with paragraph 13.08.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

A. Design/Builder shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

A. Design/Builder shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design/Builder is obligated to act to prevent threatened damage, injury or loss. Design/Builder shall give Owner prompt written notice if Design/Builder believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Design/Builder in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Submittals

A. Owner will review and approve Submittals in accordance with the schedule of required Submittals accepted by Owner as required by paragraph 2.06.A. Owner's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the construction, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Owner's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

B. Owner's review and approval of Submittals shall not relieve Design/Builder from responsibility for any variation from the requirements of the Contract Documents unless Design/Builder has in a separate written communication at the time of submission called Owner's attention to each such variation and Owner has given written approval.

C. Construction prior to Owner's review and approval of any required Submittal will be at the sole risk of Design/Builder.

6.18 Continuing the Work

A. Design/Builder shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending

resolution of any disputes or disagreements, except as Design/Builder and Owner may otherwise agree in writing.

6.19 Post-Construction Phase

A. Design/Builder shall:

1. Provide assistance in connection with the start-up, testing, refining and adjusting of any equipment or system.
2. Assist Owner in training staff to operate and maintain the Work.
3. Assist Owner in developing systems and procedures for control of the operation and maintenance of and record keeping for the Work.

6.20 Design/Builder's General Warranty and Guarantee

A. Design/Builder warrants and guarantees to Owner that all Construction will be in accordance with the Contract Documents and will not be defective. Design/Builder's warranty and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification or improper maintenance or operation by persons other than Design/Builder, Subcontractors, or Suppliers or any other individual for whom Design/Builder is responsible; or
2. Normal wear and tear under normal usage.

B. Design/Builder's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Design/Builder's obligation to perform the Work in accordance with the Contract Documents:

1. Observations by Owner;
2. The making of any progress or final payment;
3. The issuance of a certificate of Substantial Completion;
4. Use or occupancy of the Work or any part thereof by Owner;
5. Any acceptance by Owner or any failure to do so;
6. Any review and approval of a Submittal;
7. Any inspection, test or approval by others; or

8. Any correction of defective Construction by Owner.

6.21 Indemnification

A. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultants, and the officers, directors, partners, employees, agents, other consultants and subcontractors of each from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from the performance of Construction, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom) but only to the extent caused by any negligent act or omission of Design/Builder, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform or furnish any of the Work.

B. In any and all claims against Owner, Owner's Consultant or any of their respective consultants, agents, officers, directors, partners or employees by any employee (or the survivor or personal representative of such employee) of Design/Builder, any Subcontractor, any Supplier, any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.21.A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Design/Builder or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts or other employee benefit acts.

C. The indemnification obligations of Design/Builder under paragraph 6.21.A shall not extend to the liability of Owner's Consultant, and their officers, directors, partners, employees, agents, other consultants, and subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications.

ARTICLE 7 – OTHER CONSTRUCTION

7.01 Related Work at Site

A. Owner may perform other Work related to the Project at the Site by Owner's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. Written notice thereof will be given to Design/Builder prior to starting any such other work; and

2. Design/Builder may make a Claim therefor as provided in Article 9 if Design/Builder believes that such performance will involve additional expense to Design/Builder or requires additional time and the parties are unable to agree as to the amount or extent thereof.

B. Design/Builder shall afford each other contractor who is a party to such a direct contract and each utility owner (and Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Design/Builder shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Design/Builder shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Owner and the others whose work will be affected. The duties and responsibilities of Design/Builder under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Design/Builder in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Design/Builder's Work depends upon work performed or services provided by others under this Article 7, Design/Builder shall inspect such other work and appropriate instruments of service and promptly report to Owner in writing any delays, defects or deficiencies in such other work or services that render it unavailable or unsuitable for the proper execution and results of Design/Builder's Work. Design/Builder's failure so to report will constitute an acceptance of such other work as fit and proper for integration with Design/Builder's Work except for latent or nonapparent defects and deficiencies in such other work.

7.02 Coordination

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. The individual or entity who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

2. The specific matters to be covered by such authority and responsibility will be itemized; and

3. The extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 General

A. Owner shall do the following in a timely manner so as not to delay the services of Design/Builder:

1. Designate in writing a person to act as Owner's Representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, make decisions with respect to performance of the Work, and shall provide such other services as may be agreed upon;

2. Provide such legal services as Owner may require with regard to legal issues pertaining to the Project including any that may be raised by Design/Builder;

3. If requested in writing by Design/Builder, furnish reasonable evidence satisfactory to Design/Builder that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Design/Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days notice to the Owner;

4. Make payments to Design/Builder promptly when they are due as provided in paragraph 13.03 and 13.08;

5. Furnish the Site as set forth in paragraph 4.01.A;

6. Furnish to Design/Builder, as required for performance of Design/Builder's Services the following, all of which Design/Builder may use and rely upon in performing services under this Agreement:

a. Environmental assessment and impact statements;

b. Property, boundary, easement, right-of-way, topographic, and utility surveys;

c. Property descriptions;

d. Zoning, deed, and other land use restrictions;

e. Engineering surveys to establish reference points for design and construction which in Owner's judgment are necessary to enable Design/Builder to proceed with the Work;

f. Assistance to Design/Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project;

g. Permits, licenses, and approvals of government authorities Owner is specifically required to obtain by the Contract Documents; and

h. All subsurface data at or contiguous to the Site which Owner may have obtained.

7. Review Submittals subject to Owner review pursuant to paragraph 6.17.A; and

8. Provide information known to or in the possession of Owner relating to the presence of materials and substances at the Site which could create a Hazardous Environmental Condition.

8.02 Insurance

A. Owner's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in Article 5.

8.03 Limitations on Owner's Responsibilities

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Design/Builder's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Design/Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Design/Builder's failure to perform the Work in accordance with the Contract Documents.

8.04 Undisclosed Hazardous Environmental Condition

A. Owner's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Materials uncovered or revealed at the Site is set forth in paragraph 4.04.

8.05 Resident Project Representation

A. Owner may furnish a Resident Project Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions.

8.06 Owner's Consultant

A. Owner's Consultant, if any, has no duties, responsibilities, or authorities with respect to Design/Builder, unless so provided in the Supplementary Conditions.

ARTICLE 9 – CHANGES IN THE WORK; CLAIMS

9.01 Authorized Changes in the Work

A. Without invalidating the Agreement and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work within the general scope of the Contract by a Change Order or a Work Change Directive. Upon receipt of any such document, Design/Builder shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

9.02 Unauthorized Changes in the Work

A. Design/Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Construction as provided in paragraph 12.04.

9.03 Claims

A. *Notice.* If Owner and Design/Builder are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of any order of Owner pursuant to paragraph 9.01.A or other occurrence for which the Contract Documents provide that such adjustment(s) may be made, a Claim may be made therefor. Written notice of intent to make such a Claim shall be submitted to the other party promptly and in no event more than 15 days after the start of the occurrence or event giving rise to the Claim.

B. *Documentation.* Substantiating documentation shall be submitted by the claiming party within 30 days after delivery of the notice required by paragraph 9.03.A.

C. *Decision.* The other party shall render a decision on the Claim no more than 30 days after the receipt of the substantiating documentation required by paragraph 9.03.B. This decision will be final and binding unless the claiming party gives notice of intention to exercise its rights under Article 15 within 30 days of receipt of the decision and exercises such rights within 30 days of giving the notice of intent.

D. *Time Limit Extension.* The time limits of paragraphs 9.03.B and 9.03.C may be extended by mutual agreement.

9.04 Execution of Change Orders

A. Owner and Design/Builder shall execute appropriate Change Orders covering:

1. Changes in the Work which are (i) ordered by Owner pursuant to paragraph 9.01, (ii) required because of acceptance of defective Construction under paragraph 12.08 or Owner's correction of defective Work under paragraph 12.09 or (iii) agreed to by the parties; and

2. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive.

9.05 Notice to Sureties

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design/Builder's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

ARTICLE 10 – COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

10.01 Cost of the Work

A. *Costs Included.* The term Cost of the Work means the sum of all costs necessarily incurred and paid by Design/Builder in the proper performance of the Work. When the value of Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Design/Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 10.01.B:

1. Payroll costs for employees in the direct employ of Design/Builder in the performance of the Work under schedules of job classifications agreed upon by Owner and Design/Builder.

a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.

b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services. For purposes of this paragraph 10.01.A.1, Design/Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, both as designated in the Agreement, for all services performed or furnished by such employees engaged on the Project.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Design/Builder unless Owner deposits funds with Design/Builder with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design/Builder shall make provisions so that they may be obtained.

3. Payments made by Design/Builder to Subcontractors (excluding payments for Design Professional Services pursuant to paragraph 10.01.A.4) for Work performed or furnished by Subcontractors. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Design/Builder's Cost of the Work and fee.

4. Payments made by Design/Builder for Design Professional Services provided or furnished under a Design Subagreement.

5. Costs of special consultants (including but not limited to testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

6. Supplemental costs including the following items:

a. The proportion of necessary transportation, travel and subsistence expenses of Design/Builder's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Design/Builder.

c. Rentals of all construction or engineering equipment and machinery and the parts thereof whether rented from Design/Builder or others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Design/Builder is liable, imposed by Laws or Regulations.

e. Deposits lost for causes other than negligence of Design/Builder, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses, damages, and related expenses caused by damage to the Work not compensated by insurance or otherwise, sustained by Design/Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design/Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Design/Builder's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. Cost of premiums for all Bonds and insurance Design/Builder is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded.* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Design/Builder's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Design/Builder whether at the Site or in Design/Builder's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 10.01.A.1, all of which are to be considered administrative costs covered by the Design/Builder's fee.

2. Expenses of Design/Builder's principal and branch offices other than Design/Builder's office at the Site.

3. Any part of Design/Builder's capital expenses, including interest on Design/Builder's capital employed for the Work and charges against Design/Builder for delinquent payments.

4. Costs due to the negligence of Design/Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.01.A.

C. *Design/Builder's Fee.* When all the Work is performed on the basis of cost-plus, Design/Builder's fee shall be as set forth in the Agreement. When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design/Builder's fee shall be determined as set forth in paragraph 11.01.C.

D. *Documentation.* Whenever the cost of any Work is to be determined pursuant to paragraph 10.01.A and 10.01.B, Design/Builder will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

10.02 Cash Allowances

A. The Contract Price includes all allowances so named in the Contract Documents. Design/Builder shall cause the Work so covered to be performed for such sums as may be acceptable to Owner. Design/Builder agrees that:

1. The allowances include the cost to Design/Builder (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Except as set forth in the Contract Documents, Design/Builder's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Design/Builder on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.03 Unit Prices

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design/Builder will be made by Owner.

B. Each unit price will be deemed to include an amount considered by Design/Builder to be adequate to cover Design/Builder's overhead and profit for each separately identified item.

C. Design/Builder or Owner may make a Claim for an adjustment in the Contract Price in accordance with Article 9 if:

1. the quantity of any item of Unit Price Work performed by Design/Builder differs materially and significantly from the estimated quantity of such item indicated in the Contract Documents;

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Design/Builder believes that it is entitled to an increase in Contract Price as a result of having incurred

additional expense or Owner believes it is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 11 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

11.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the Claim to the other party promptly in accordance with paragraph 9.03.A.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 10.03); or

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.01.C.2); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 10.01) plus a Design/Builder's Fee for overhead and profit (determined as provided in paragraph 11.01.C).

C. Design/Builder's Fee: The Design/Builder's fee for overhead and profit on Change Orders shall be determined as follows:

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

- a. For costs incurred under paragraphs 10.01.A.1.a and 10.01.A.2, the Design/Builder's fee shall be 15 percent;

b. For costs incurred under paragraph 10.01.A.3 10.01.A.4, 10.01.A.5 and 10.01.A.6, the Design/Builder's fee shall be five percent;

c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.01.C.1 and 11.01.C.2.a is that the Subcontractor who actually performs or furnishes Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 10.01.A.1 and 10.01.A.2 and that any higher tier Subcontractor and Design/Builder will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. The amount of credit to be allowed by Design/Builder to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Design/Builder's fee by an amount equal to five percent of such net decrease; and

e. When both additions and credits are involved in any one change, the adjustment in Design/Builder's fee shall be computed on the basis of the net change in accordance with paragraphs 11.01.C.2.a through 11.01.C.2.d, inclusive.

11.02 Change of Contract Times

A. The Contract Times (or Milestones) may only be changed by a Change Order. Any Claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice pursuant to paragraph 9.03.A.

B. *Delays Beyond Design/Builder's Control.* Where Design/Builder is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Design/Builder, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 11.02.A. Delays beyond the control of Design/Builder shall include, but not be limited to, acts or neglect by Owner, governmental agencies, acts or neglect of utility owners or other contractors performing other construction work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

C. If Owner or other contractor or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Design/Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Design/Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design/Builder's ability to complete the Work within the Contract Times.

D. If Design/Builder is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Design/Builder, then Design/Builder shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Design/Builder's ability to complete the Work within the Contract Times. Such an adjustment shall be Design/Builder's sole and exclusive remedy for the delays described in this Paragraph 11.02.C.

E. Owner and Owner's Consultant shall not be liable to Design/Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design/Builder on or in connection with any other project or anticipated project.

F. Design/Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Design/Builder. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Design/Builder.

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION

12.01 Notice of Defects

A. Owner shall give Design/Builder prompt written notice of all defective Construction of which Owner has actual knowledge. All defective Construction may be rejected, corrected or accepted as provided in this Article 12.

12.02 Access to Construction

A. Owner, Owner's Consultants, other representatives and personnel of Owner, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Design/Builder shall provide them proper and safe conditions for such access and advise them of Design/Builder's Site safety procedures and programs so that they may comply therewith as applicable.

12.03 Tests and Inspections

A. If the Contract Documents or Laws or Regulations of any public body having jurisdiction require any part of the Construction specifically to be inspected, tested or approved, Design/Builder shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all

costs in connection therewith, and furnish Owner the required certificates of inspection or approval. Design/ Builder shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's acceptance of materials or equipment to be incorporated in the Work or of materials, mix designs, or equipment submitted for approval prior to Design/Builder's purchase thereof for incorporation in the Work.

B. Design/Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, or approvals.

C. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design/Builder without written concurrence of Owner, it must, if requested by Owner, be uncovered for observation at Design/Builder's expense unless Design/Builder has given Owner timely notice of Design/Builder's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

12.04 Uncovering Construction

A. If any Construction is covered contrary to the written request of Owner, it must, if requested by Owner, be uncovered for Owner's observation and recovered at Design/Builder's expense.

B. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, Design/Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material and equipment. If it is found that such Construction is defective, Design/Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction, (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If, however, such Construction is not found to be defective, Design/Builder shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Design/Builder may make a Claim therefor as provided in Article 9.

12.05 Owner May Stop Construction

A. If Construction is defective, or Design/Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design/Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design/Builder or any other party.

12.06 Correction or Removal of Defective Construction

A. Owner will have authority to disapprove or reject defective Construction and will have authority to require special inspection or testing of the Construction whether or not the Construction is fabricated, installed or completed. If required by Owner, Design/Builder shall promptly, as directed, either correct all defective Construction, whether or not fabricated, installed or completed, or, if the Construction has been rejected by Owner, remove it from the Site and replace it with non-defective Construction. Design/Builder shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and all court, arbitration, or other dispute resolution costs) arising out of or relating to such correction or removal.

12.07 Correction Period

A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design/Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (i) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design/Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design/Builder.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial

Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.

C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, removed or replaced under this paragraph 12.07, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

12.08 Acceptance of Defective Construction

A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. Design/Builder shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If the acceptance occurs after final payment, an appropriate amount will be paid by Design/Builder to Owner.

12.09 Owner May Correct Defective Construction

A. If Design/Builder fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction as required by Owner in accordance with paragraphs 12.06.A or 12.07.A, or if Design/Builder fails to perform the Construction in accordance with the Contract Documents, or if Design/Builder fails to comply with any other provision of the Contract Documents, Owner may, after seven days' written notice to Design/Builder, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph 12.09 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design/Builder from all or part of the Site, take possession of all or part of the Construction, and suspend Design/Builder's services related thereto, take possession of Design/Builder's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere. Design/Builder shall allow Owner, Owner's Consultant, Owner's representatives, agents, employees, and other contractors access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising such rights and remedies under this paragraph 12.09 will be charged against Design/Builder and a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9.

D. Design/Builder shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this paragraph 12.09.

ARTICLE 13 – PAYMENTS TO DESIGN/BUILDER AND COMPLETION

13.01 Schedule of Values

A. The Schedule of Values established as provided in paragraph 2.06.A will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.02 Application for Progress Payment

A. On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design/Builder shall submit to Owner for review an Application for Payment filled out and signed by Design/Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.

B. Beginning with the second Application for Payment, each Application shall include an affidavit of Design/Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design/Builder's legitimate obligations associated with prior Applications for Payment.

C. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

13.03 Progress Payments

A. *Procedure.* Progress payments shall be made by the Owner to the Design/Builder according to the following procedure:

1. Owner will, within ten days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design/Builder indicating in writing its reasons for refusing to accept the Application. Not more than ten days after accepting such Application the amount will become due and when due will be paid by Owner to Design/Builder.

2. If Owner should fail to pay Design/Builder at the time the payment of any amount becomes due, then Design/Builder may, at any time thereafter, upon serving written notice that he will stop the Work within seven days after receipt of the notice by Owner, and after such seven day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner.

3. Payments due but unpaid shall bear interest at the rate specified in the Agreement.

4. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

B. *Reduction in or Refusal to Make Payment.* Owner may refuse to make the whole or any part of any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any previous payment, to the extent that is reasonably necessary to protect Owner from loss because:

1. the Construction is defective, or completed Construction has been damaged requiring correction or replacement; or

2. the Contract Price has been reduced by Change Order; or

3. Owner has been required to correct defective Construction or complete Work in accordance with paragraph 12.09.A; or

4. Owner has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.A.; or

5. Claims have been made against Owner on account of Design/Builder's performance or furnishing of the Work; or

6. Liens have been filed in connection with the Work, except where Design/Builder has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

7. There are other items entitling Owner to a set off against the amount for which application is made.

C. If Owner refuses to make payment of the full amount requested by Design/Builder, Owner must give Design/Builder immediate written notice stating the reasons for such action and promptly pay Design/Builder any amount remaining after deduction of the amount withheld. Owner shall promptly pay Design/Builder the amount withheld or any adjustment thereto agreed to when Design/Builder corrects to Owner's satisfaction the reason for such action.

13.04 Design/Builder's Warranty of Title

A. Design/Builder warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

13.05 Substantial Completion

A. When Design/Builder considers the Work ready for its intended use Design/Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design/Builder as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Design/Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design/Builder in writing giving the reasons therefor. If Owner considers the Work substantially complete, Owner will prepare and deliver to Design/Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final payment. At the time of delivery of the certificate of Substantial Completion Owner will deliver to Design/Builder a written determination as to division of responsibilities pending final payment between Owner and Design/Builder with respect to security, operation, safety, protection of Construction, maintenance, heat, utilities, insurance and warranties and guarantees.

B. Owner will have the right to exclude Design/Builder from the Site after the date of Substantial Completion, but Owner will allow Design/Builder reasonable access to complete or correct items on the list of items to be completed.

13.06 Partial Utilization

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (i) has specifically been identified in the Contract Documents, or (ii) Owner and Design/Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design/Builder's performance of the remainder of the Construction, subject to the following:

1. Owner at any time may request Design/Builder in writing to permit Owner to use or occupy any such part of the Construction which Owner believes to be ready for its intended use and substantially complete. If Design/Builder agrees that such part of the Work is substantially complete, Design/Builder will certify to Owner that such part of the Construction is substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Construction. Design/Builder at any time may notify Owner in writing that Design/Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, Owner and Design/Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design/Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of paragraph 13.05 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

13.07 Final Inspection

A. Upon written notice from Design/Builder that the entire Work or an agreed portion thereof is complete, Owner will make a final inspection with Design/Builder and will notify Design/Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design/Builder shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.08 Final Payment

A. Application for Payment.

1. After Design/Builder has completed all such corrections to the satisfaction of Owner and delivered in

accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, record documents (as provided in paragraph 6.12) and other documents, Design/Builder may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (unless previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by paragraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to Owner) of all Liens arising out of or filed in connection with the Work.

3. In lieu of such releases or waivers of Liens specified in paragraph 13.08.A.2 and as approved by Owner, Design/Builder may furnish receipts or releases in full and an affidavit of Design/Builder that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Design/Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Final Payment and Acceptance.* If Owner is satisfied that the Work has been completed and Design/Builder's other obligations under the Contract Documents have been fulfilled, Owner will, within ten days after receipt of the final Application for Payment, give written notice to Design/Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design/Builder, indicating in writing the reasons for refusing to process final payment, in which case Design/Builder shall make the necessary corrections and resubmit the Application.

C. *Payment Becomes Due.* Thirty days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability, the amount will become due and will be paid by Owner to Design/Builder.

13.09 Final Completion Delayed

A. If, through no fault of Design/Builder, final completion of the Work is significantly delayed, Owner shall, upon receipt of Design/Builder's final Application for Payment, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held

by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01.A, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Design/Builder to Owner with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

13.10 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. A waiver of all Claims by Owner against Design/Builder, except Claims arising from unsettled Liens, from defective Construction appearing after final inspection pursuant to paragraph 13.07, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Design/Builder's continuing obligations under the Contract Documents; and

2. A waiver of all Claims by Design/Builder against Owner other than those previously made in writing and still unsettled.

ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION

14.01 Owner May Suspend Work

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to Design/Builder which will fix the date on which Work will be resumed. Design/Builder shall resume the Work on the date so fixed. Design/Builder shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Design/Builder makes a Claim therefor as provided in Article 9.

14.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events justifies termination for cause:

1. Design/Builder's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.06.A as adjusted from time to time pursuant to paragraph 6.05).

2. Design/Builder's disregard of Laws or Regulations of any public body having jurisdiction.

3. Design/Builder's violation in any substantial way of provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 14.02.A occur, Owner may, after giving Design/Builder (and the surety, if any) seven days' written notice, terminate the services of Design/Builder, take possession of any completed Drawings and Specifications prepared by or for Design/Builder (subject to the indemnification provisions of paragraph 3.05.A), exclude Design/Builder from the Site, and take possession of the Work and of all Design/Builder's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by Design/Builder (without liability to Design/Builder for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design/Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to Design/Builder. If such costs, losses and damages exceed such unpaid balance, Design/Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.

C. Notwithstanding paragraph 14.02.B, Design/Builder's services will not be terminated if Design/Builder begins, within seven days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

D. Where Design/Builder's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design/Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design/Builder by Owner will not release Design/Builder from liability.

14.03 Owner May Terminate for Convenience

A. Upon seven days' written notice to Design/Builder, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design/Builder shall be paid (without duplication of any items) for:

1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. Amounts paid in settlement of terminated contracts with Subcontractors, Suppliers and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs incurred in connection with termination of contracts with Subcontractors, Suppliers and others); and

4. Reasonable expenses directly attributable to termination.

B. Except as provided in paragraph 14.03.C, Design/Builder shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

14.04 Design/Builder May Stop Work or Terminate

A. If, through no act or fault of Design/Builder, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, or Owner fails to act on any Application for Payment within thirty days after it is submitted or Owner fails for thirty days to pay Design/Builder any sum finally determined to be due, then Design/Builder may, upon seven days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Agreement and recover from Owner payment on the same terms as provided in paragraph 14.03.A. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Design/Builder any sum finally determined to be due, Design/Builder may upon seven days' written notice to Owner stop the Work until payment is made of all such amounts due Design/Builder, including interest thereon. The provisions of this paragraph 14.04.A are not intended to preclude Design/Builder from making Claim under Article 9 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Design/Builder's stopping Work as permitted by this paragraph.

ARTICLE 15 – DISPUTE RESOLUTION

15.01 Methods and Procedures

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no such method and procedure has been set forth, Owner and Design/Builder may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 16 – MISCELLANEOUS

16.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by certified mail, postage prepaid, to the last business address known to the giver of the notice.

16.02 Computation of Times

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

16.03 Cumulative Remedies

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by:

1. Laws or Regulations; or
2. any special warranty or guarantee; or
3. other provisions of the Contract Documents.

B. The provisions of paragraph 16.03.A will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

16.04 Survival of Obligations

A. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive

final payment, completion and acceptance of the Work and termination or completion of the Contract.

16.05 *Controlling Law*

A. The Contract Documents will be construed in accordance with the law of the place of the Project.

SUPPLEMENTARY CONDITIONS

SC-1	Definitions
SC-3.05-A	Reuse of documents
SC-4.02.A	Differing Site Conditions
SC-4.04.A	Hazardous Environmental Condition at Site
SC-4.04.B	Hazardous Environmental Condition at Site
SC-4.04.D	Hazardous Environmental Condition at Site
SC-4.04.E	Hazardous Environmental Condition at Site
SC-5.03.A	Certificates of Insurance
SC-5.04.A.7	DESIGN/BUILDER's Liability Insurance
SC-5.04.B.5	DESIGN/BUILDER's Liability Insurance
SC-5.04.B.8	DESIGN/BUILDER's Liability Insurance
SC-5.04.C	DESIGN/BUILDER's Liability Insurance
SC-5.06.A	Property Insurance
SC-6.08.A	Permits
SC-6.10	Taxes
SC-6.17.A	Submittals
SC-6.20	DESIGN/BUILDERS General Warranty & Guarantee
SC-6.21	Indemnification
SC-7.01.C	Related Work at Site
SC-9.03.A	Claims
SC-10.01.B	Cost of Work
SC-10.01.C	Cost of Work
SC-11.01.B.3	Change of Contract Price
SC-11.02.D	Change of Contract Price
SC-12.06.A	Correction or Removal of Defective Construction
SC-16.05.A	Controlling Law
SC-16.06	Other
SC-17	Waiver

These Supplementary Conditions amend or supplement the Standard General Conditions of the Contract between the OWNER and DESIGN/BUILDER (EJCDC D-520, 2002 ed.) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

SC-1 Definitions

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Contract between the OWNER and the DESIGN/BUILDER (EJCDC D-520, 2002 ed.) have the meanings assigned to them in the General Conditions except that the "OWNER" may be referred herein as the "Owner" and or as the "City".

SC-3.05.A Reuse of Documents

Delete Paragraph 3.05.A in its entirety and insert the following in its place:

- A. All documents including Drawings and Specifications prepared or furnished by Design/Builder pursuant to this Agreement when delivered to and accepted by the City, shall become the property of the City when Design/Builder has been compensated by the City under the terms of this Agreement. Design/Builder agrees to allow the City to review any of the procedures used in performing the work and services hereunder, and to make available for inspection the field notes

SUPPLEMENTARY CONDITIONS: continued

and other documents used in the preparation for and performance of any of the services performed hereunder.

- B. Design/Builder shall have common law, statutory and other reserved rights in the drawings, specifications and other documents, including those in electronic form, prepared by Design/Builder for use with respect to this Project. However, Design/Builder gives the City an irrevocable license to use the drawings, specifications, and other documents prepared by Design/Builder for completion of this Project. This license is for the benefit of the City and its assigns and permits the City to retain other architects, engineers and design professionals who may use the drawings, specifications and other documents for such purposes.

All drawings, specifications and other documents shall become the property of the City, at the conclusion of the Project, whether the Project for which they are made is executed or not, or the termination of the services of Design/Builder, whichever is earlier, and shall be delivered to the City clearly marked and identified in good order. Such documents may be used by the City to complete the project. Design/Builder shall not be liable for injury or damage resulting from reuse of drawings, specifications and other documents for a project in which Design/Builder is not also involved, the City will remove and obliterate from such documents all identification of the original Design/Builder, including name, address, professional seal and stamp.

- C. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of Design/Builder's or the City's rights.

SC-4.02.A Differing Site Conditions

Add the following additional paragraph: Inclement weather beyond statistical norms as reported by NOAA for the project geographical area shall not constitute a differing Site condition, but will entitle the DESIGN/BUILDER to additional time commensurate to the weather delays impact on the project's critical path schedule."

SC-4.04.A Hazardous Environmental Condition at Site

Delete Paragraph 4.04.A in its entirety, replace with the following paragraph 4.04.A

"DESIGN/BUILDER will not be responsible for any Hazardous Environmental Condition encountered at the Site except as specifically provided for herein. DESIGN/BUILDER shall be responsible for materials creating a Hazardous Environmental Condition only where such condition is created by DESIGN/BUILDER, Subcontractors, Suppliers or anyone else for whom DESIGN/BUILDER is responsible."

SC-4.04.B Hazardous Environmental Condition at Site

Add the following to the beginning of the first sentence. "Except to the extent a Hazardous Condition is identified as the Work,"

SC-4.04.D Hazardous Environmental Condition at Site

Insert the following paragraphs between paragraph 4.04.D and 4.04.E.

"E. OWNER shall disclose to DESIGN/BUILDER the location and types of any known or suspected toxic, hazardous or chemical materials or wastes existing on or near the premises upon which work is to be performed by DESIGN / BUILDER, or DESIGN / BUILDER's Consultants employees or subcontractors. If any Hazardous Wastes not identified by OWNER in the Contract

SUPPLEMENTARY CONDITIONS: continued

Documents are discovered after this Agreement is executed, the Work, schedule and compensation shall be adjusted upon mutual agreement of OWNER and DESIGN/BUILDER.

F. OWNER acknowledges that DESIGN/BUILDER is performing professional services for OWNER, and that DESIGN/BUILDER is not and shall not become a Potentially Responsible Party (such as an "arranger", "operator", "generator", "transporter", "treator", "storer", "handler", or "disposer" as defined the CERCLA or RCRA,) related to any Hazardous Environmental Condition or any Hazardous Waste which are or may be encountered at or near the Site or in connection with DESIGN/BUILDER'S activities under this Agreement."

SC-4.04.E Hazardous Environmental Condition at Site

Replace paragraph 4.04.E with the following: "G. To the fullest extent permitted by the Kansas Tort Claims Act and other Laws or Regulations, Owner shall indemnify and hold harmless Design/Builder, Subcontractors, Suppliers and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Contract Documents to be included in the scope of the Work, and (ii) was not created by Design/Builder or by anyone for whom Design/Builder is responsible. Nothing in this paragraph 4.04.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence. Further, to the extent any claim for indemnity hereunder would have been subject to an exception to liability or a liability cap under the Kansas Tort Claims Act, if brought against the City directly, the same exception to liability and/or cap will apply to the City's obligation to indemnify under this section.

SC-5.03.A Certificates of Insurance

Delete the phrase "(and other evidence of insurance requested by OWNER or any other additional insured)" in lines 3-4 and lines 8-9.

SC-5.04.A.7 DESIGN/BUILDER's Liability Insurance

Add the following new paragraph following Paragraph 5.04.A.6:

7. Claims for damages because of the performance of all professional activities, including Design Professional Services

SC-5.04.B.5 DESIGN/BUILDER's Liability Insurance

Delete the words "materially changed" from the first sentence.

SC- 5.04.B.8 DESIGN/BUILDER's Liability Insurance

Add the following new Paragraphs following SC-5.04.B.7:

8. The Comprehensive (also commonly referred to as "Commercial") General Liability Insurance shall be written in a comprehensive form and shall protect Design/Builder against all claims arising from injuries to persons (other than Design/Builder's employees) or damage to property of the City or others

SUPPLEMENTARY CONDITIONS: continued

arising out of any negligent act or omission of Design/Builder, its agents, officers, employees, consultants or subcontractors in the performance of Design/Builder's services under this Agreement.

9. Every such policy shall be procured and maintained with appropriate forms and insurers acceptable to the City. All coverage shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Design/Builder, pursuant to its indemnity obligations under this Agreement. The City shall be added as an additional insured on every such policy with the exception of Workers Compensation, Employers' Liability and Professional Liability. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Design/Builder pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Design/Builder shall be solely responsible for any deductible losses under any required policy.

10. Every policy, except professional liability insurance, required above shall be primary insurance, and any insurance carried by the City, its officers, its employees or its consultants shall be excess and not contributory insurance to that provided by Design/Builder. No additional insured endorsement to the policy required by this paragraph shall contain any exclusion for bodily injury or property damage arising from completed operations.

11. Satisfactory Certificates of Insurance shall be filed with the City prior to the time Design/Builder starts any work under this agreement. Design/Builder shall furnish the City certificates of insurance in a form acceptable to the City evidencing that the insurance coverage required to be maintained by Design/Builder hereunder are in full force and effect. In addition, insurance policies applicable hereto shall contain a provision that provides that the City shall be given thirty (30) days written notice by the insurance company before such policy is canceled.

12. Failure on the part of Design/Builder to procure or maintain policies providing the required coverages, conditions and limits shall constitute a material breach of the Agreement. In such event, as its sole discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Design/Builder to the City upon demand, or the City may offset the cost of the premiums against any monies due to Design/Builder from the City.

13. Design/Builder shall procure and maintain or shall cause any consultant of Design/Builder, concerning the services delegated under this Agreement to such consultant, to procure and maintain Professional Liability Insurance to insure its professional activities in an amount not less than \$1,000,000 and the insurance coverages required in Paragraph 5.04.A of this Agreement.

14. Failure of the City to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency from evidence provided shall not be construed as a waiver of Design/Builder's obligation to maintain such insurance.

SC-5.04.C DESIGN/BUILDER's Liability Insurance

Add the following new Paragraphs following SC-5.04.B.

- C. The limits of liability for insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

SUPPLEMENTARY CONDITIONS: continued

1. Workers' Compensation, and related coverages under paragraphs 5.04.A.1 and A.2 of the General Conditions:

- a. State: \$500,000 per occurrence
- b. Employer's Liability \$1,000,000 per occurrence

2. Comprehensive General Liability under paragraphs 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody, and control of the Contractor:

- a. General Aggregate \$2,000,000
- b. Products - Completed Operations Aggregate \$1,000,000 per occurrence
- c. Personal and Advertising Injury \$1,000,000 per occurrence
- d. Each Occurrence (Bodily Injury and Property Damage) \$1,000,000 per occurrence
- e. Excess or Umbrella Liability
 - 1) General Aggregate \$2,000,000
 - 2) Each Occurrence \$2,000,000

2. Automobile Liability under paragraph 5.04.6 of the General Conditions:

- a. Combined Single Limit \$1,000,000 per occurrence or accident

3. Property Damage liability insurance will provide Explosion, Collapse and Underground (X,C,U) coverages where applicable.

4. Contractual Liability coverage required by paragraph 5.04.B.4 of the General Conditions shall be provided as part of the General Liability coverage.

5. The City is to be included as an additional insured except for Workers' Compensation/Employer's Liability and Professional Liability.

6. Professional Liability under paragraph 5.04.A.7 shall be in an amount of \$1,000,000.

SC-5.06.A Property Insurance

Delete the text of Paragraph 5.06.A in its entirety and substitute:

The Design/Builder shall purchase and maintain Builder's Risk "all risk" coverage upon the Work at the Site in the amount of the full replacement cost thereof. Design/Builder, Owner, Owner's Consultant and subcontractors of all tiers are to be included as additional insureds on the policy.

SC-6.08.A Permits

Delete Paragraph 6.08.A in its entirety replace with the following: DESIGN/BUILDER shall obtain and pay for the following permits: Sedgwick County Building Permit, City of Wichita Building Permit (if required and permit fee shall be waived). Application for and costs associated with acquisition of

SUPPLEMENTARY CONDITIONS: continued

additional permits shall remain the responsibility of the OWNER. DESIGN / BUILDER shall provide a site assessment for potential environmental and cultural resource permitting. It is anticipated that no additional services will be required. The site assessment may reveal the need to obtain and comply with environmental or cultural preservation permits. Revisions to the scope of work and revisions to the project schedule that are a result of permit requirements determined during the course of the project shall require an adjustment in contract price or contract schedule or both. Owner shall pay for all charges of utility owners for connection to the work, including all charges of such utility owners for the connection of such utilities to the work.

SC-6.10 Taxes

Add the following language at the end of paragraph 6.10 of the General Conditions:

"Materials and equipment incorporated into this Project are exempt from the payment of sales tax under the Laws of the State in which the Project is located and such sales tax shall not be included in Project cost. OWNER will provide DESIGN / BUILDER with a proper exemption certificate number within ten days of the date of the Agreement. Should OWNER fail to provide an exemption certificate number within the required time period, DESIGN / BUILDER will be reimbursed monthly for sales tax amounts for which he becomes liable until such certificate number is provided. OWNER will provide an exemption certificate number within 60 days or it shall be presumed that the Project will proceed on a non-exempt basis, and the Contract amount will be equitably adjusted in writing in a lump sum amount sufficient to cover DESIGN / BUILDER'S sales tax expense. Upon issuance of a proper exemption certificate number to DESIGN / BUILDER, DESIGN / BUILDER shall assume full responsibility for his own proper use of the certificate number, and shall pay all costs of any legally assessed penalties relating to DESIGN / BUILDER'S improper use of the exemption certificate number."

SC-6-17.A Submittals

Add the following to the end of the first sentence. "Which shall include 15 days for the OWNER's review and approval"

SC-6.20 DESIGN/BUILDERS General Warranty and Guarantee

Add the following sub-sections:

"C. If, prior to Substantial Completion or within one year after the date of Substantial Completion of the Work, any Defective Work is found, the OWNER shall promptly notify the DESIGN/BUILDER in writing.

1. Unless the OWNER provides written acceptance of the condition, the DESIGN/BUILDER shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period the OWNER discovers and does not promptly notify the DESIGN/BUILDER or give the DESIGN/BUILDER an opportunity to test and/or correct Defective Work as reasonably requested by the DESIGN/BUILDER, the OWNER waives the DESIGN/BUILDER's obligation to correct that Defective Work as well as the OWNER's right to claim a breach of the warranty with respect to that Defective Work.

2. With respect to any portion of Work first performed after Substantial Completion, the one year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the DESIGN/BUILDER.

SUPPLEMENTARY CONDITIONS: continued

3. If the DESIGN/BUILDER fails to correct Defective Work within a reasonable time after receipt of written notice from the OWNER prior to final payment, the OWNER may correct such Defective Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due the DESIGN/BUILDER. If payments then or thereafter due DESIGN/BUILDER are not sufficient to cover such amounts, the DESIGN/BUILDER shall pay the difference to the OWNER.
4. If after the one-year correction period but before the applicable limitation period the OWNER discovers any Defective Work, the OWNER shall, unless the Defective Work requires emergency correction, promptly notify the DESIGN/BUILDER. The DESIGN/BUILDER and OWNER shall mutually agree upon whether the DESIGN/BUILDER shall complete the correction of Work. If DESIGN/BUILDER and OWNER agree that the DESIGN/BUILDER will correct the Defective Work, the DESIGN/BUILDER and OWNER shall mutually agree upon the nature of the corrective action to be taken and the allowable time frame for effecting such action. If the DESIGN/BUILDER does not correct the Work, the OWNER may have the Work corrected by itself or by others and charge the DESIGN/BUILDER for the reasonable cost of the correction. OWNER shall provide DESIGN/BUILDER with an accounting of correction costs it incurs.
5. If the DESIGN/BUILDER's correction or removal of Defective Work causes damage to or destroys other completed or partially completed construction, the DESIGN/BUILDER shall be responsible for the cost of correcting the destroyed or damaged construction.
6. The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the DESIGN/BUILDER's other obligations under the Contract Documents or the OWNER's rights under any applicable statute of limitations.
7. Prior to final payment, at the OWNER's option and with the DESIGN/BUILDER's agreement, the OWNER may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted."

SC-6.21 Indemnification

Delete SC-6.21 and replace with the following: A. Design/Builder hereby agrees to indemnify, and hold harmless the City, its officials, officers, and employees from any claims, damages, suits, costs and expenses, liability, actions or proceedings of any kind or nature to the extent caused directly or indirectly by the comparative fault of Design/Builder for negligent acts or errors or omissions, its agents, servants, employees or subconsultants occurring in the performance of its design services or construction activities under the Agreement. The insurance coverage specified in this Agreement constitutes the minimum requirements and these requirements do not lessen or limit the liability of Design/Builder hereunder.

B. Design/Builder agrees that it will contractually obligate its subcontractors and subconsultants to indemnify and hold harmless the indemnitees identified in this Paragraph to the same extent that Design/Builder is required to indemnify and hold harmless said indemnitees.

C. In the event of the filing of record of a lien or verified claim against any property on which the Project is located by, by a subcontractor or subconsultant, or by any other person or entity for which Design/Builder may be responsible, Design/Builder shall promptly remove the lien or claim in accordance with the laws of the State of Kansas.

SUPPLEMENTARY CONDITIONS: continued

D. Design/Builder shall protect, defend, indemnify, and hold harmless the City from and against any claims, actions, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) in the event that litigation is filed by one of Design/Builder's subcontractors or subconsultants for non-payment by Design/Builder to that subcontractor or subconsultant.

E. Except with respect to the Copper Ion System (CIS) Design/Builder shall take reasonable actions to inform the City of known potential patents on processes, designs, or devices that may be incorporated into the Project. Design/Builder agrees to protect, defend and save harmless the City against any claim or demand for payment for the use of any patented or copyrighted material, process, design, article or device that may enter into the work being performed by Design/Builder under this Agreement to the extent that the City shall have provided Design/Builder reasonable notice of such claim or demand for payment.

F. Except for the indemnity set forth in SC-4.04.E., The City does not agree to indemnify, hold harmless, exonerate or assume the defense of Design/Builder or any other person, or entity whatsoever, for any purpose whatsoever by or in connection with this Agreement.

7.01.C Related Work at the Site

Delete the last sentence in its entirety.

SC-9.03.A Claims

Change 15 days to 30 days.

SC-10.01.B Cost of Work

The exclusions provided for in B.1 and B.2 shall not be applicable to personnel whose efforts are directly related to the Work.

SC-10.01.C Cost of Work

Add a new paragraph: 3. Where Engineering services are provided; the fee would be a multiplier of 3.3 times the direct cost of such services.

SC-11.01.B.3 Change of Contract Price.

Add the following words after 11.01.B.2.....change in contract price shall be determined....

SC-11.02.D Change of Contract Times

Change to read as follows. "If DESIGN/BUILDER is delayed in the performance or progress of the work by fire, flood, epidemic, abnormal weather conditions, acts of God, war, shortage, civil unrest, failures to act of utility OWNER's not under the control of OWNER, or other causes not the fault of or under control of the OWNER and DESIGN/BUILDER, then DESIGN/BUILDER shall be entitled to an equitable adjustment of Contract Time."

SC-12.06.A Correction or Removal of Defective Construction

Add the following to the end of Paragraph 12.06.A, "provided, however that this obligation shall not extend beyond indirect or consequential costs of correction or removal, to consequential damages arising under the law of contract, such as damages for loss of revenue or profit, lost production, claims by customers of OWNER, or governmental fines or penalties, and provided, further, that it shall not extend to any issues with the CIS equipment other than faulty installation."

SUPPLEMENTARY CONDITIONS: continued

SC-16.05.A Controlling Law

Change SC-16.05.A to read as follows: "The laws of the state of Kansas will govern the construction of and the remedies available under this Agreement. Venue for any lawsuit arising under or related to this Agreement shall be before the Eighteenth Judicial District Court of Kansas (Sedgwick County, Kansas) or the United States District Court for the District of Kansas sitting in Wichita, Kansas."

SC-16.06 Other

Insert the following SC-16.06.A thru H.

A. In the event any dispute arises under this Agreement and during the time such dispute is being resolved, Design/Builder hereby agrees that it shall continue performance under this Agreement in accordance with the terms and conditions hereof since time is of the essence and City shall continue to compensate Design/Builder for all undisputed payment amounts. Design/Builder's failure to continue expeditious performance due to a dispute arising under this Agreement, at the option of the City, shall be construed as a material breach of this Agreement.

B. Design/Builder and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

C. The term of this Agreement shall commence upon execution and end upon final completion of the services to be provided hereunder by Design/Builder. The insurance and indemnification provisions of this Agreement shall survive such termination.

D. The captions and headings set forth in this Agreement are for convenience and for reference only and shall not be construed so as to define or limit the terms and provisions hereof.

E. This Agreement is intended as the complete integration of all prior oral or written understandings between the Parties. No prior or contemporaneous additions, deletions or other amendments shall have any force or effect, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties and signed by the signatories to the original Agreement.

F. Supplemental Agreements and other amendments to the Agreement shall require approval by the City in the manner required by City policy.

G. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.

H. Cash Basis Law: It is the intent of the parties that the provisions of this Agreement are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, et seq.) (Cash Basis Law) or the Kansas Budget Law (K.S.A. 79-2925) (Budget Law). Therefore, notwithstanding anything to the contrary herein contained, the Owner's obligations under this Agreement are to be construed in a manner that assures that the Owner is at all times not in violation of the Cash Basis Law or the Budget Law. Accordingly, the Owner's obligations hereunder will be subject to sufficiency of annual appropriations.

SUPPLEMENTARY CONDITIONS: continued

SC-17 Waiver

Add the following provision:

"Consequential Damages: In no event will DESIGN/BUILDER be liable for any special, indirect, or consequential damages including, without limitation, damages or losses in the nature of increased Project costs, (except those costs of correction or removal which Design/Builder is required to bear under SC-12.06.A), loss of revenue or profit, lost production, claims by customers of OWNER, or governmental fines or penalties.

**REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Project: City of Wichita, Kansas
Zebra Mussel Control
Cheney Lake



WORK DESCRIPTION

This Work Description is not intended to be comprehensive. This Work Description identifies major definable components of the Project as they can be defined at the time that the contract was prepared. The final Project will provide a complete and workable facility. In addition to the major components called out herein, the Project includes associated, ancillary and connecting components and features required to achieve the project goal, whether or not these items are specifically called out in this Work Description.

PROCESS DESCRIPTION

Copper Ion Units are provided by the City of Wichita to control zebra mussels from intake piping and equipment. The project objectives expressed by the OWNER are: 1. The control of the buildup of Zebra Mussels in the Cheney Reservoir intake and raw water piping system to the point of application of ozone down stream of the raw water pumps. 2. Prevention of plugging the aerator orifices at the Wichita Water treatment plant. 3. City has elected to utilize copper ion to control zebra mussels in the intake and raw water piping of the Cheney Reservoir Pump Station, because copper is being added ; intake strainer backwash, ozone strainer backwash, and ozone cooling water can no longer discharge to the river.

Currently the aerators at the Wichita Water Treatment Plant have orifice openings of 9/32 – inch. The Cheney raw water strainers are equipped with 1/8 inch (3mm) slot size screens. Back wash from the raw water strainers will be screened by 3 mm screens prior to being discharged to a recycle system that pumps screened backwash and ozone cooling water to suction side of the existing raw water pump. . Flows from the ozone cooling water strainers will be routed to the same 3 mm (1/8-inch) screen prior to discharge to recycle system. Ozone cooling water does not require further screening and will be routed directly to the recycle system . The recycle recovery system will pump screened backwash from the raw water strainers and ozone cooling water strainers along with unscreened ozone cooling water, to the suction side of the raw water pumps where it will be pumped to the WTP for further treatment. Floor drains from the Cheney pump station will be isolated from the recycle and recovery system and sent to the existing septic system or stored for removal by a septage hauler.

01000 GENERAL CONDITIONS

Supervision, Administrative Costs, Temporary Facilities

Sales Taxes are not included for items incorporated into the work; Owner will provide a Tax Exemption Certificate for the project.

Sales tax for consumable items is included.

Builders Risk provided.

Design Services.

Civil testing lab services for concrete and soil testing are included as an allowance by the Design/Builder.

Performance Bond for Construction is provided; not for the Design.

Professional liability insurance coverage applies to design only.
City of Wichita shall provide Owner's Protective Insurance.
Integrated project O&M manuals are not provided. O&M's supplied by equipment suppliers shall be turned over to the Owner in paper form – three (3) sets hard copy.
Building permits and fees are excluded.
Boundary survey is excluded.
Cultural and environmental permitting and assessments are excluded.
Existing parking lot will be restored to existing condition.
All required Building, Mechanical and Electrical permits as may be required by Sedgwick.
Owner has selected and procured CIS technology for control of zebra mussels. Owner will furnish and Design / Builder will install CIS equipment. Design / Builder makes no representation regarding the performance of CIS equipment. Owner agrees to indemnify and defend Design / Builder against any claim brought about by the performance or non performance of CIS equipment.
In the event that there are discrepancies between any other document and this document, this document shall govern.

01005 ALLOWANCES – (included in the lump sum price)

Allowance items are included in the lump sum price. Decisions will be made by the Owner for their use. In the event that the decisions made are in excess of the amounts listed, the Owner shall pay such additional cost. In the event that the decisions made are less than the amounts listed, the Owner shall be entitled to the amounts remaining.

1. **Civil testing** – any civil testing by an independent lab for soil, concrete or asphalt testing. \$5,000.00

01010 SPECIAL SITE CONDITIONS

Geotechnical information is was provided by Owner dated 7/15/2010 prepared by Terracon Consultants. Design / Builder has relied on the Owner furnished subsurface information without independent verification
Hazardous or special waste is not anticipated to be encountered in the course of this project.
Testing for, removal of and disposal of hazardous or Special waste is not included in this contract.
Property description and platting will be completed by the Owner and a copy has been provided to the Design / Builder.

01015 OWNER FURNISHED ITEMS

Owner to acquire land necessary for project.
Owner will provide easements, right of entry or other instruments necessary for the Design / Builder to construct facilities on property owned by others. Including but not limited to permit or permission to install CIS silution line on the landward side of the Cheney Reservoir dam and intake structure.
All chemicals for startup, testing and plant operation will be supplied by Owner.
Cost of electrical power for construction, testing and startup shall be by the Owner.
Supply of the Copper Ion Solution units including manufacturer's services for startup and testing of the units. Warranty is supplied from manufacturer directly to the Owner. Design / Builder has no other responsibility for this equipment.

02050 DEMOLITION - GENERAL

As a part of the retrofit of the existing plant, several components will be removed or rerouted. Any and all components will be returned to the Owner. In the event that Owner does not want materials returned, Design / Builder will properly dispose of.

02075 DEMOLITION - MECHANICAL

All equipment at the existing PAC units and carbon slurry equipment will be removed and components will be returned to the Owner. In the event that Owner does not want materials returned, Design / Builder will properly dispose of.

02100 SITE CLEARING / GRUBBING

Site in any landscaped area will be stripped and stockpiled - all materials to be utilized or wasted on site.

02200 SITE EXCAVATION / BACKFILL

Excavation shall be as necessary to construct structure(s) in accordance with the drawings. Backfill will be with onsite materials meeting specifications. Spoils will be wasted on site.

02250 STRUCTURAL EXCAVATION/BACKFILL

Structural excavation and backfill will be in accordance with the recommendations of the Geotechnical Engineering prepared by Owner dated 7-15-2010.
At the Design / Builders option a thin mud slab may be installed in lieu of aggregate to stabilize the subgrade and provide undisturbed construction access.
Site grading and backfilling of structures to 90%; except Roadways to 95%

02275 TRENCH EXCAVATION/BACKFILL

Aggregate Bedding - 6" below pipe - open graded materials for aggregate bedding 85% relative density is required.
Backfill around pipe to 95%, above pipe - 2' to 90%, except in Roadways.

02535 PIPE INSTALLATION

HDPE pipe to the intake will be buried 3' deep from the area near the PAC tank, to the dam, routed on the landward face of the dam.
Pipe from Ozone Plant will be buried with approximately 3' cover.

02546 AGGREGATE SURFACING

Existing roads will be repaired back to existing condition.

02546 ASPHALT PAVING

All plant roads and parking shall consist of the same construction as existing removed asphalt.

02546 CONCRETE PAVING

All plant roads and parking shall consist of the same construction as existing removed concrete.

02560 SITE UTILITIES

Existing sanitary sewer septic tank and field will be utilized for the disposal of the floor drain waste. No removal or modification of the system is included.

02605 PRECAST MANHOLES / STRUCTURES

Meter vaults and valve vaults will be standard round precast structures with cast bottom and lid with integral hatch or manway.

02650 YARD PIPING

The existing 16-inch strainer backwash line is to be routed to the PAC storage tank where it penetrates the tank wall and discharges to the screening equipment.

The 8-inch ozone strainer backwash line will be connected in the yard and routed to the PAC storage tank where it will connect to the 16-inch intake strainer backwash line and enter the screening unit located in the PAC storage tank.

The 6-inch ozone cooling water line will be connected in the yard and routed directly to the PAC storage tank. The line will enter the PAC storage tank and drop down the interior wall and discharge near the bottom of the tank.

Floor drains in the ozone building are connected with a separate drain line to the septic tank. This drain line will not be altered in this project.

Floor drains from the Cheney pump station will be isolated from the recycle and recovery system and sent to the existing septic system or stored for removal by a septage hauler.

Piping for the CIS system from Cheney pump station building to the intake structure shall be 6-inch HDPE.

02832 CHAIN LINK FENCE

Any removed fencing will be replaced with the same material and configuration to match the existing facilities.

02930 SEED AND SOD

Seeding is included upon completion of the contract for any disturbed areas.

Seed will be per KDOT specifications, natural grasses will be in all possible locations.

Design / Builder is responsible to grade and level in preparation for topsoil.

Topsoil will be stockpiled at beginning of project and re-spread at the end, No additional topsoil import is anticipated in the project.

02940 LEAKAGE TEST

All piping shall be pressure tested at 1.5 times working pressure if line is pressure line.

If line is gravity line, it shall be tested to a maximum of 3psi. Any new concrete tanks will be hydrostatically tested; Owner to supply water for testing.

02941 DISINFECTION

All finished water pipe, equipment and storage tanks associated with finished water will be cleaned and disinfected per AWWA standards.

02942 DEWATERING

Dewatering is included for all excavations as necessary to complete the work

031000 FORMWORK

Exterior Form -

Fill any repairable honeycomb; patch all tie holes.

Exposed concrete surfaces shall not be coated or painted unless otherwise noted in the painting section (09900).

Joints to be noticeable, but not protruding

Chamfer tops of exposed walls

032000 REINFORCING

ASTM A615 Grade 60 - No Epoxy, Welded wire fabric used in non-structural slabs and sidewalks

033000 CONCRETE

ASTM C 150 Type II cement – 1" nominal maximum aggregate

Class A – 2500psi – for fill and encasement

Class B – 4000psi – for site civil

Class D – 4500psi – for structural concrete

PVC water stop at all wall/floor and roof/wall joints for water bearing structures.

Steel trowel all floor finish in buildings with floor sealer, except at exterior flat work which will have a light broom finish.

Float finish for all water bearing structures.

042200 MASONRY

Interior block – Standard gray lightweight 8" CMU.

Bond beams as required.

Reinforcing as required.

055000 MISCELLANEOUS METALS

Any added handrails - aluminum, mechanical assembly - 2 rails with toe kick plate.

Any added stairs – Galvanized or aluminum with grate treads and 2 rail handrail.

076200 FLASHING / SHEET METAL

Standard prefinished gutters and downspouts as required by the pre-fabricated building supplier.

079200 JOINT SEALANTS

Doors/windows/louvers and construction joints in masonry and concrete.

081100 HOLLOW METAL DOORS, FRAMES

Standard Metal and Hardware – 3'0"x 7'-0" 1-3/4" thick with standard frame or 6'-0" x 7'-0" x 1 3/4" thick with standard frame.

Exterior doors shall not have security contacts.

083100 ACCESS HATCHES

All floor hatches will be standard aluminum hatches as manufactured by Halliday or Bilco. Sizes and configurations to be reviewed by Owner. Hatch to be added to existing revised PAC tank.

087000 FINISH HARDWARE

Standard door hardware, medium grade, includes locksets as necessary for security purposes.
Electric strikes and card readers are not required for security.
Keys for doors to be per Owner requirements.

099000 PAINTING

Interior new masonry and new drywall.
Steel - 2 coat if not galvanized, aluminum or stainless steel.
Hollow metal doors and frames.
Repair or replacement of disturbed floor areas in chlorine room for a uniform appearance.

101400 SIGNS

Door signs for each of the buildings or rooms per code or Owner requirements.

105200 FIRE EXTINGUISHERS

Approved wall brackets with 5 lb. ABC Units for all buildings per code requirements

11230 PREFABRICATED BUILDING

Prefabricated fiberglass or concrete building over the screen equipment and dumpster located over the PAC tank. Building will include one door, roof hatch, heat, fan, louver, 208/120V lighting panel, lights and electrical receptacles.

11300 PUMPS

Three dry pit recycle pumps are provided with VFD's.
Existing electrical equipment is utilized to power these pumps.
Pumps operate as two duty one standby.
Pumps design flow rate is 626 gpm at 104 ft of TDH.
Pumps are 25 hp or 30 hp depending on manufacturer.

See design memo for detailed pump description and design information.

11500 DRUM SCREEN

One rotary drum Screen Muneier, WesTech or equal sized for a maximum flow of 2000 gpm with a screen slot opening size of 3 mm. Dumpster furnished by Owner.

13000 HOISTS

Portable or permanent hoisting access for CIS node removal and replacement.

15005 PIPING

Interior piping to match existing piping for service type and duty requirements.

15008 PVC CHEMICAL & MISC PIPE

Miscellaneous PVC/CPVC pipe shall be Schedule 80 with glue fittings.

15009 PROCESS VALVES

Valves shall be as detailed on the Process and Instrumentation Diagrams for type and duty service and shall have operators as noted. Pratt valves as applicable.

15011 PIPE SUPPORTS

Any and all supports to match existing for type and material.
Revisions to existing trays shall match for style and material.

15400 PLUMBING

Oil / water separator added to floor drain discharge to septic tank, if applicable.

15500 HVAC

New screen discharge structure shall be heated and ventilated but not conditioned. Ventilation to be interlocked with door contact. Heat for screen building will be electric, propane or from existing hot water system.

15650 PIPE INSULATION

Solution piping across walkway at intake may be heat traced and insulated as necessary for service requirements.

250000 MEASURING AND CONTROL INSTRUMENTATION

251400 Control Panels, Instruments and Controls

Control panels – NEMA 12 indoors, NEMA 3R outdoors, NEMA 4X in corrosive areas.
Control panels with PLC to include series SPD with sine wave filtering.

253005 Measuring and Controlling Instruments and Loops

Ultrasonic level in wet well to control pumps.
Effluent pressure transmitter.
Effluent magnetic flow meter.

253100 Programmable Logic Controller

PLC control panel to be located in copper ion room or in area below it.
PLC will control recycle pumps, receive new instrument signals, and monitor screen.
Copper ion generators to be flow-paced by raw water signal from existing plant control system.
Copper Ion system will be interlocked to operate whenever the high service pumps operate.
Recycle pumps will be control by water level in wet well. Pumps will be controlled to maintain a set point and operate in lead, lag, and standby function.
New equipment PLC to communicate with existing PLC in mezzanine.
Existing plant control system HMI software and screens to be updated to monitor new system status and alarms.

26000 ELECTRICAL

All work to be completed per National Electric Code
Light fixtures over new doors.
No added pole or yard lights.
No additional security features.
It is anticipated that existing MCC3 can be modified to power the new pumps and screen.

260526 Wireway, Cable and Accessories

600V power and control circuits – single conductor THHN/THWN.
Shielded instrument cable – 600V, Cable tray type, PVC jacket, twisted pairs. #16.

260534 Conduit, Fittings and Accessories
Rigid Galvanized Steel and Fittings.

260580 Motors and Accessories
480V, 3-phase, Open Drip-Proof Motors, 1.15 minimum service factor. L10 bearing life of 100,000 hours.

262413 Switchboards
175A molded-case circuit breaker in existing 480V switchboard to power new 600A MCC4.

262419 Motor Control Center
Modify existing MCC3 located in the space below the former chlorine room.
Reuse existing 15 kVA step-down transformer and existing 208/120V lighting panel LP7 for small power. LP7 will feed new 208/120V panelboard in new screen building.
MCC will be modified with new molded case circuit breakers to power VFDs.
Standalone VFDs shall be 6-pulse PWM type with 3% line reactor.

265000 Lighting Devices Switches and Receptacles
Outdoor lights – High Pressure Sodium
Indoor lights – fluorescent with instant start ballasts
Lighting Switches and receptacles in FS/FD boxes
Lighting switches – grey with stainless steel cover plates
Receptacles – grey with stainless steel cover plates – specification grade

Date: September 8, 2010
To: Deb Ary
From: Burns & McDonnell / CAS, LLC
Re: Design Memorandum
City of Wichita, Kansas
Zebra Mussel Control System
Cheney Lake

A. General:

The project objectives expressed by the OWNER are: 1. The control of the buildup of Zebra Mussels in the Cheney Reservoir intake and raw water piping system to the point of application of ozone downstream of the raw water pumps. 2. Prevention of plugging the aerator orifices at the Wichita Water treatment plant. 3. City has elected to utilize copper ion to control zebra mussels in the intake and raw water piping of the Cheney Reservoir Pump Station, because copper is being added; intake strainer backwash, ozone strainer backwash, and ozone cooling water can no longer discharge to the river.

Currently the aerators at the Wichita Water Treatment Plant have orifice openings of 9/32 – inch. The Cheney raw water strainers are equipped with 1/8 inch (3mm) slot size screens. Back wash from the raw water strainers will be screened by 3 mm screens prior to being discharged to a recycle system that pumps screened backwash and ozone cooling water to suction side of the existing raw water pump. Flows from the ozone cooling water strainers will be routed to the same 3 mm (1/8-inch) screen prior to discharge to recycle system. Ozone cooling water does not require further screening and will be routed directly to the recycle system. The recycle recovery system will pump screened backwash from the raw water strainers and ozone cooling water strainers along with unscreened ozone cooling water, to the suction side of the raw water pumps where it will be pumped to the WTP for further treatment. Floor drains from the Cheney pump station will be isolated from the recycle and recovery system and sent to the existing septic system or stored for removal by a septage hauler.

B. Screen Design Criteria

For the purpose of our proposal, flow criteria for the screen sizing was taken from the 2009 Conceptual Design and Final Recommendations Report Zebra Mussel Control System Design Study, referenced as 2009 design study throughout this memorandum. Flow from the intake backwash strainers is 2000 gpm for duration of 5 minutes. The screen may see

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additional flow of 220 gpm from the ozone strainer backwash; however, this flow is stated in the report to last only 24 seconds and does not surpass the maximum loading on the screen.

Also included in the design study is the screen slot size opening specified at 1/8-inch (3 mm) based on 3/16-inch (5 mm) intake strainer slot size opening. However, after discussion with Cheney Reservoir plant personnel it was determined that the intake strainer slot size opening is 1/8-inch (3 mm). This screen size opening is fairly small and careful consideration was given to provide a screen that provides the least operational difficulties for plant staff. Based on the 3 mm screen is based on the 2009 design study.

This screen is operated by its individual control panel based on level of water upstream of the screen equipment and time based operation. The following is a summary of screen design criteria:

- | | |
|-------------------|-------------|
| 1. Quantity | 1 Screen |
| 2. Screen Opening | 3 mm |
| 3. Design Flow | 2000 gpm |
| 4. Hp | 5.5 hp |
| 5. Voltage | 480 |
| 6. Type | Drum Screen |
| 7. Manufacturer | |
| a. WesTech | |
| b. Meunier | |
| c. Or equivalent | |

C. Copper Ion System Design Criteria:

Copper ion units are supplied by the City of Wichita. Installation of the units and interconnecting piping is supplied by Design / Builder. The 2009 design study was followed for installation of the copper ion units. This incorporates the use of flow control valves to provide 100 gpm of flow to each unit based on upstream magnetic flow meter readings. Flow is provided from Cheney high service pump discharge pressure through the non-potable water supply. One design consideration which was not taken into account during the 2009 design study was the available nonpotable water pressure and whether or not this water pressure is sufficient to convey flow to the intake structure. After talking with Cheney plant personnel, during low flow conditions the plant discharge can be as low as 55 psi with

September 8, 2010

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average flow conditions producing 88 psi discharge pressure. Calculations were performed for headloss incurred during one and two copper ion unit operation. It was found that the 4-inch pipeline conveying CIS water from the Cheney pump station to the intake structure incurred significant headloss and could not provide sufficient flow with 2 units running during low flow conditions. Under normal operation, 2 units are not required during low flow conditions. However, it may be necessary to dose copper at higher concentrations during low flow conditions as circumstances require higher copper concentration to remove zebra mussels or other possible future invasive species. The following is a summary of Copper Ion Unit design criteria:

- | | |
|---------------------------------|--------------------------|
| 1. Quantity | 2 units provided by City |
| 2. Type | Macrotech Inc. |
| 3. Flow | 100 gpm per unit |
| 4. Minimum Non-Potable Pressure | 55 psi |
| 5. Normal Non-Potable Pressure | 88 psi |
| 6. Pipeline to Intake Structure | 4 or 6-inch HDPE |

D. Recycle Recovery System Design Criteria:

Three dry pit pumps are provided with VFD's to operate under varying flow and discharge pressure conditions. Pumps operate as two duty one standby. The three dry pit pumps are located in the sub-basement adjacent to the PAC storage tanks. The following is a brief overview of pump criteria:

- | | |
|-----------------------|--|
| 1. Quantity | 2 duty / 1 standby |
| 2. Flow | 626 gpm per pump |
| 3. TDH _{max} | 104 feet |
| 4. TDH _{min} | 14.5 feet |
| 5. Voltage | 480 V |
| 6. Horsepower | 25 hp or 30 hp depending on manufacturer |
| 7. Type | |
| 8. Manufacturer | |
| a. Aurora | |
| b. Fairbanks Morse | |
| c. Flowserve | |
| d. Patterson | |
| e. or Equal | |

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The maximum pump flow rate is calculated based on the following information:

1. Raw Water Strainer Backwash
 - a. 2000 gpm per strainer
 - b. 5 minute duration per strainer
 - c. 3 strainer backwashes per hour
 - d. $(2000 \text{ gpm/strainer} * 5 \text{ min} * 3 \text{ strainers/hour}) / (60 \text{ min/hr}) = 500 \text{ gpm}$
2. Ozone Cooling Water Strainers
 - a. 220 gpm per strainer
 - b. 24 second duration per strainer every 4 hours
 - c. 4 strainers
 - d. $(220 \text{ gpm/strainer} * 24 \text{ sec} * 4 \text{ strainers/4 hours}) / (3600 \text{ sec/hr}) = 1.5 \text{ gpm}$
3. Ozone Cooling Water – Constant flow of 750 gpm
4. Maximum Total Flow Rate = **1251.5 gpm**

Two smaller pumps were chosen to deliver 626 gpm instead of one large pump to deliver 1251 gpm because maximum flow conditions rarely occurred. Two pumps better fit the average day conditions by only requiring one pump to run with minimal on and off operation. Minimizing the starts and stops of the pumps increases life expectancy and minimizes wear. The following summarizes average flow rate condition calculations:

1. Raw Water Strainer Backwash
 - a. 2000 gpm per strainer
 - b. 5 minute duration per strainer
 - c. 3 strainer backwashes per 4 hours
 - d. $(2000 \text{ gpm/strainer} * 5 \text{ min} * 3 \text{ strainers/4 hour}) / (60 \text{ min/hr}) = 125 \text{ gpm}$
2. Ozone Cooling Water Strainers
 - a. 220 gpm per strainer
 - b. 24 second duration per strainer every 4 hours
 - c. 2 strainers
 - d. $(220 \text{ gpm/strainer} * 24 \text{ sec} * 2 \text{ strainers/4 hours}) / (3600 \text{ sec/hr}) = 0.75 \text{ gpm}$
3. Ozone Cooling Water – Constant flow of 375 gpm
4. Average Conditions Total Flow Rate = **501 gpm**

Total Dynamic Head is largely influenced by Cheney Reservoir water level. Cheney Reservoir water level varies from elevation 1393 ft to 1448 ft. The minimum PAC storage tank water level is 1364.5 ft which results in static head differential of 28.5 ft to 83.5 ft. Because of the large varying discharge pressure, VFD's are added to pumps to reduce speeds during lower reservoir water levels. Intake piping losses during peak and minimum flows,

September 8, 2010

Page 5

recycle pump system minor losses, and static head were taken into account when calculating the TDH_{max} of 104 ft and TDH_{min} of 14.5 ft.

E. Valves Schedule

<u>Location</u>	<u>Type</u>	<u>Service</u>	<u>Number</u>	<u>Size</u>	<u>Valve Ends</u>	<u>Operator</u>
Recycle Pump Room	BFV	Isolation	6	6-inch	Flg	Manual
Recycle Pump Room	BFV	Isolation	2	8-inch	Flg	Manual
CIS	Ball	Isolation	6	2.5-inch	Socket	Manual
CIS	Ball	Throttling	2	2.5-inch	Socket	DC Motor
CIS	BFV	Isolation	1	4-inch	Flg	Manual

F. Intake Strainer Backwash Piping Modifications

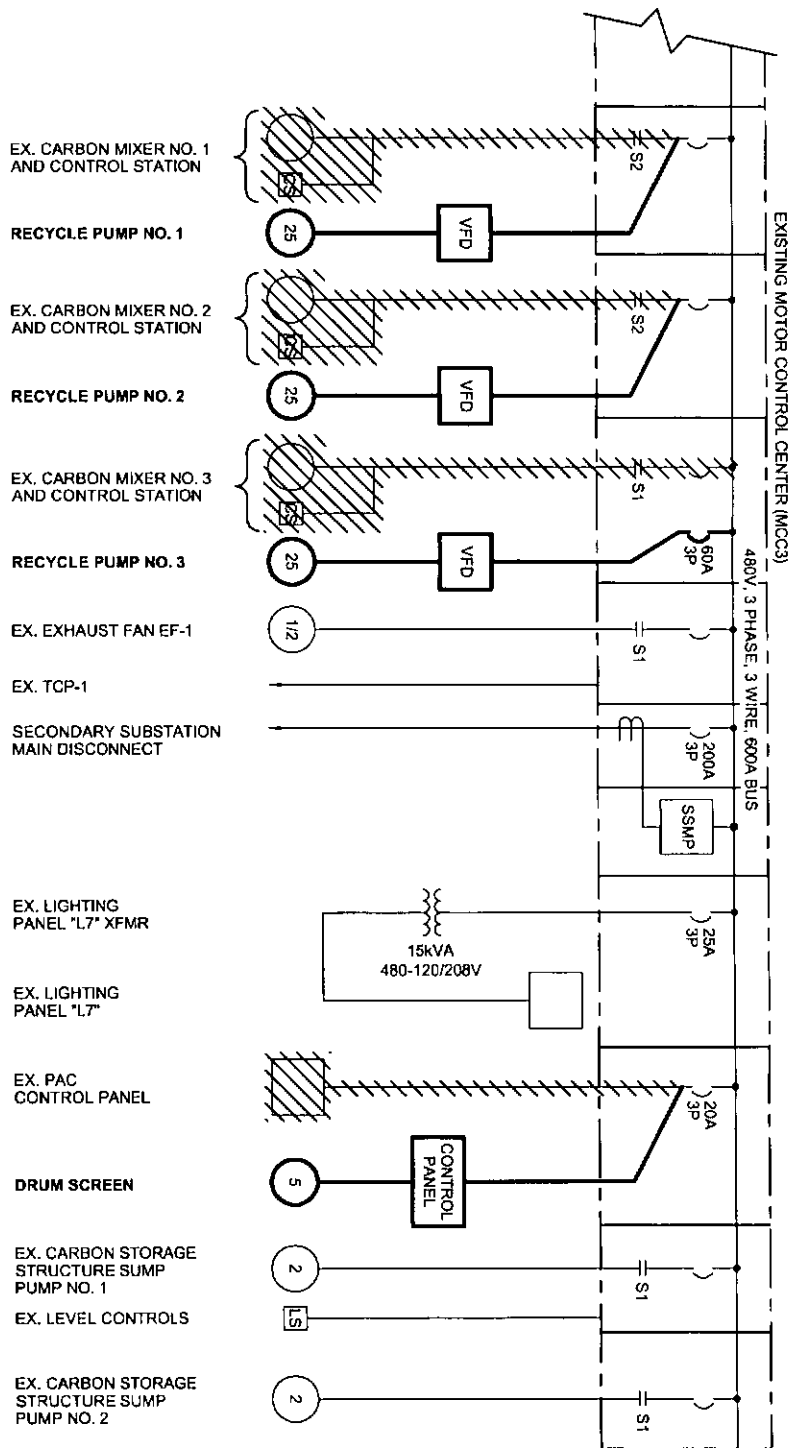
Some minor modifications to raw water strainer backwash piping will be made to minimize plant shutdown, minimize excavation, reduce construction time, and increase operational capacity of the recycle system PAC storage tank. The manufacturer of the strainers has been contacted regarding this change and does not foresee any issues as current backwash piping on one side of each strainer discharges at the our new proposed elevation. Existing 8-inch pinch valves will be reused to control the backwash cycles and time duration.

G. Process Flow Diagram

Process Flow Diagrams are attached for reference.

H. Electrical One- Line

An electrical one-line Diagram is attached for reference.



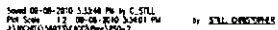
EXISTING MOTOR CONTROL CENTER MCC3 ONE-LINE DIAGRAM



MODIFIED MCC3
ONE-LINE DIAGRAM



SCALE:	NO SCALE	
DATE:	SEPT 7, 2010	
DRAWING NO:	PS0.1	SHEET NO:



**PRELIMINARY - NOT
FOR CONSTRUCTION**

June 28, 2010

CITY OF WICHITA, KANSAS

REQUEST FOR PROPOSAL NUMBER FP030045

ADDENDUM #1

WICHITA WATER UTILITIES/PRODUCTION & PUMPING

Design/Build Zebra Mussel Control System

DUE DATE: FRIDAY, JULY 9, 2010 AT 3:00 P.M.

The following item has been added to the specifications and made a part of this proposal.

**CHANGE PROPOSAL OPENING DATE & TIME TO:
FRIDAY, JULY 23, 2010 @ 3:00 P.M.**

Move Opening Date to July 23rd. This will allow a geotechnical report to be completed and available for review.

A.3.h. – Add “to the point of ozone injection. The degree of infestation along at the intake and pipeline is unknown, steel plates placed near the intake have not been completely covered, but strainers continue to catch large amounts of zebra mussel debris.”

D.1.e. – Replace “contents of the RFP with no exceptions allowed” with “facilities recommended in the Conceptual Design and Final Recommendations Report by AECOM”

Add A.3.i – Coordination of any activity that takes Cheney Pump Station offline with Program Management of the current Aquifer Storage and Recovery Project.

Design-Build Contractor Selection Criteria

1. Cost (25 points)
2. Experience (15 points)
3. Design Concepts (40 points)
4. Proposed Schedule (20 points)

Each vendor is required to acknowledge receipt of this Addendum by his signature affixed hereto and to file same with and attached to this proposal.

Melinda A. Walker
Purchasing Manager

The undersigned acknowledges receipt of this Addendum and the proposal submitted herewith is in accordance with the information, instruction and stipulations set forth herein

JULY 6, 2010
Date

Burns iM'Donnell / CAS LLC
Company Name


Signature of Company Representative

JAMES L. FOIL, P.E.
Print Name of Company Representative

SENIOR VICE PRESIDENT
Title

CITY OF WICHITA
City Council Meeting
October 26, 2010

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Land for a Temporary Construction Easement at the Southeast Side of Golden Prairie Road and SW 24th Street for the Integrated Local Water Supply Plan (Harvey County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 3, 1993, the City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River, transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita.

From the property along the southeast side of Golden Prairie Road and SW 24th Street, the City requires a temporary construction easement comprised of 2.9 acres. There is an existing pipeline easement in place. The land is currently vacant and in agricultural production and therefore, it will be necessary to level the easement area using laser technology.

Analysis: The seller agreed to convey the necessary easement for \$10,296. This amount is comprised of \$1,160, or \$400 an acre for the 2.9 acres of the temporary construction easement; and \$9,136 as crop damages and for laser leveling.

Financial Considerations: A budget of \$11,796 is requested; this includes \$10,296 for the acquisition, \$1,500 for title work, title insurance, closing costs and administrative fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, which has sufficient funds for the proposed acquisition.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure.

Legal Considerations: The Law Department approved the contract as to form.

Recommendation/Action: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Real estate purchase agreement, tract map and area map.

EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ____ day of _____, 2010 by and between John F. Weber and Ileen L. Weber, Husband and Wife, (joint tenants) and all heirs, successors, and assigns, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Permanent Easement and/or Temporary Construction Easement of the following described real property, situated in Harvey County, Kansas, to wit:

Temporary Easement (Construction – Parcel “B”) A 50 foot wide easement, the Westerly line of which is coincident with the Easterly line of the existing Right-of-Way Condemned by the District Court of Harvey County, Kansas in Case No. 10791 and filed for record Nov. 29, 1939, in the Northwest Quarter of Section Thirty-two, Township Twenty-three South, Range Two West of the Sixth Principal Meridian, Harvey County, Kansas. Said tract contains 2.9 acres, more or less, excluding road right-of-way and existing Rail Road right-of-way.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Ten Thousand Two Hundred Ninety-six Dollars No/100 (\$10,296.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, a temporary construction easement, any and all damages including but not limited to severance, crops at time of construction, crops for one year after initiation of construction, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before September 30, 2010.

6. The Seller agrees to convey the above described premises with any and all personal property removed from within the easement area(s). Seller further agrees that any maintenance and use of said easement shall be in a manner that does not interfere with or endanger the construction, operations and maintenance of Buyer's improvements.

7. Possession to be given to Buyer on date of closing.

8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer will pay 100% closing costs.

9. In the event there are crop damages outside the easement area during construction or, crop damages resulting from the Buyer's other maintenance, operation, replacement or repairs to the pipeline, the Seller hereby agrees to file a claim with the City of Wichita, KS, City Clerk's Office, 455 North Main, Wichita, KS 67202, (316)268-4529.

10. Buyer and Seller hereby agree that Buyer, contractors and assigns will remove, store and reinstall topsoil removed from the easement corridor as a result of construction. Said topsoil, separate from bedding soil, will be temporarily stored within a temporary construction easement. The buyer will undertake to restore the soil to its pre-work condition.

11. Buyer hereby agrees that the finished grade will match the existing grade as it currently exists upon completion of the project.

12. Site Assessment

A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.


C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.

13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy. Buyer shall not sublease property for any other purpose without seller's permission.

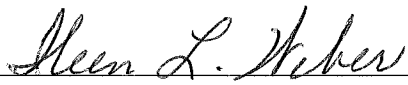
14. Paragraphs 6, 9-11 and 13 shall survive the closing.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:



John F. Weber, Husband
(joint tenant)



Ileen L. Weber, Wife
(joint tenant)

BUYER:

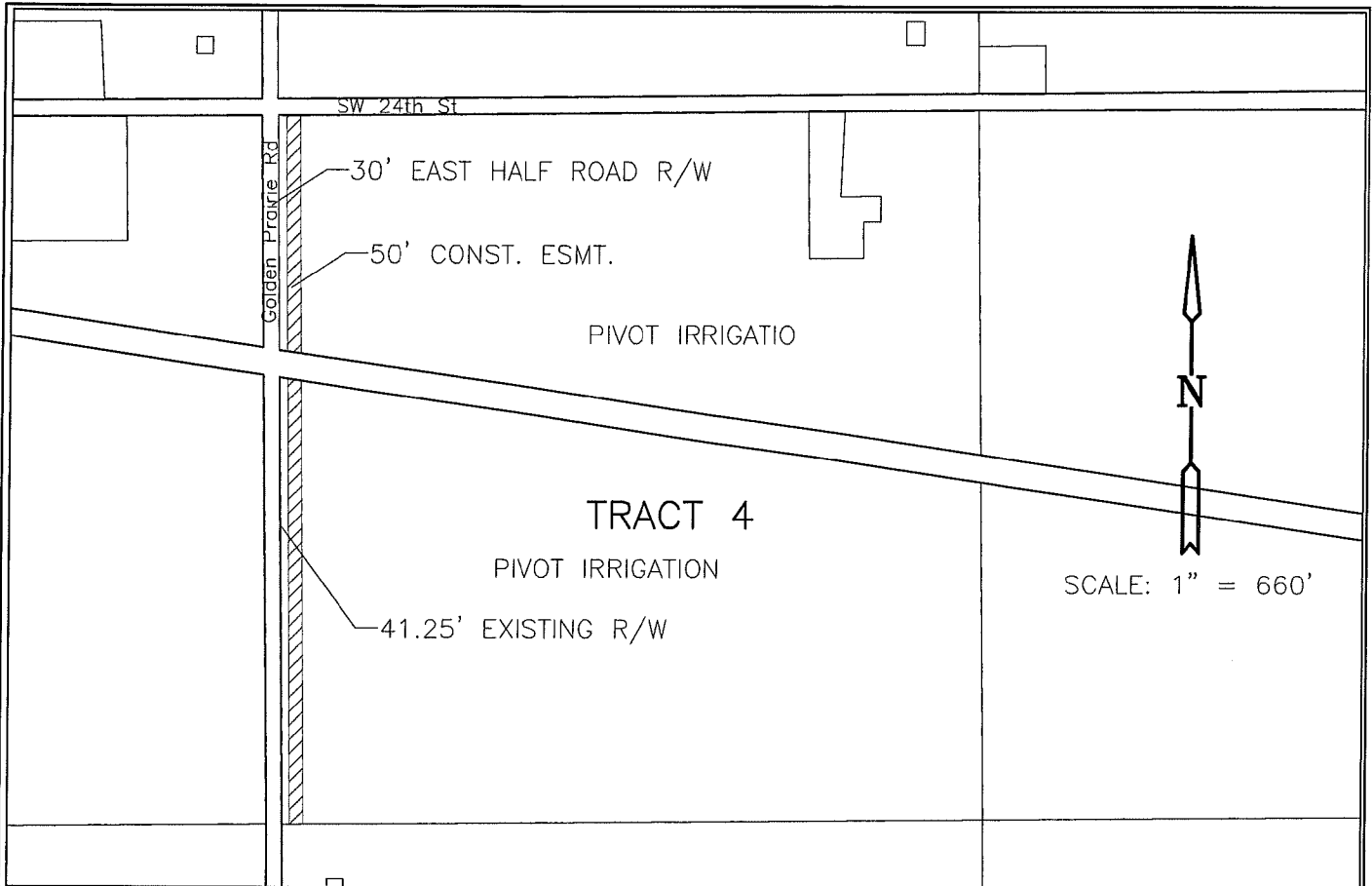
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:



Gary E. Rebenstorf, Director of Law



CONSTRUCTION EASEMENT:

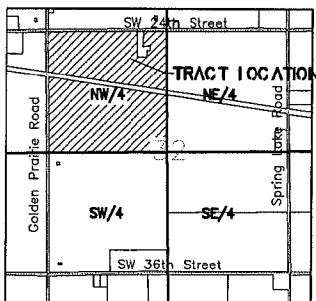
A 50 foot wide easement, the Westerly line of which is coincident with the Easterly line of the existing Right-of-Way Condemned by the District Court of Harvey County, Kansas in Case No. 10791 and filed for record Nov. 29, 1939, in the Northwest Quarter of Section Thirty-two, Township Twenty-three South, Range Two West of the Sixth Principal Meridian, Harvey County, Kansas. Said tract contains 2.9 acres, more or less, excluding road right-of-way and existing Rail Road right-of-way.

LEGEND:

-  Construction Easement
-  Easement

OWNER:

WEBER, JOHN F. & ILEEN L.



VICINITY MAP



CDM
Camp Dresser & McKee
340 Riverside, Ste. 200
Minneapolis, MN 55402
Tel (612) 696-6700
consulting • engineering • construction • operations

P&E
P&E & ASSOCIATES, INC.
CONSULTING ENGINEERS

THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

GOLDEN PRAIRIE RD. TRANSMISSION MAIN
PROJECT NAME

TRACT 4
SHEET TITLE

JGP MLT JMU
DESIGN BY DRAWN BY CHECKED BY:

AUGUST 2009 788013 1 / 1
DATE JOB NO. SHEET / OF

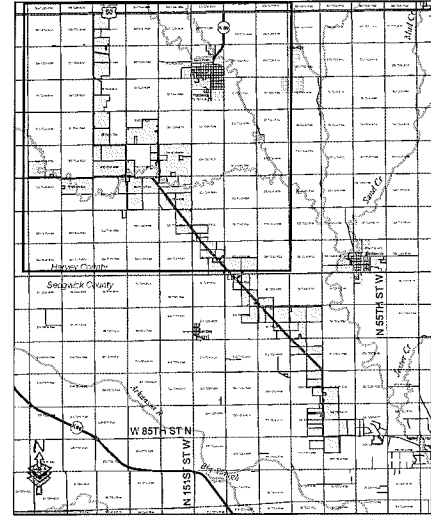


BID PACKAGE 3

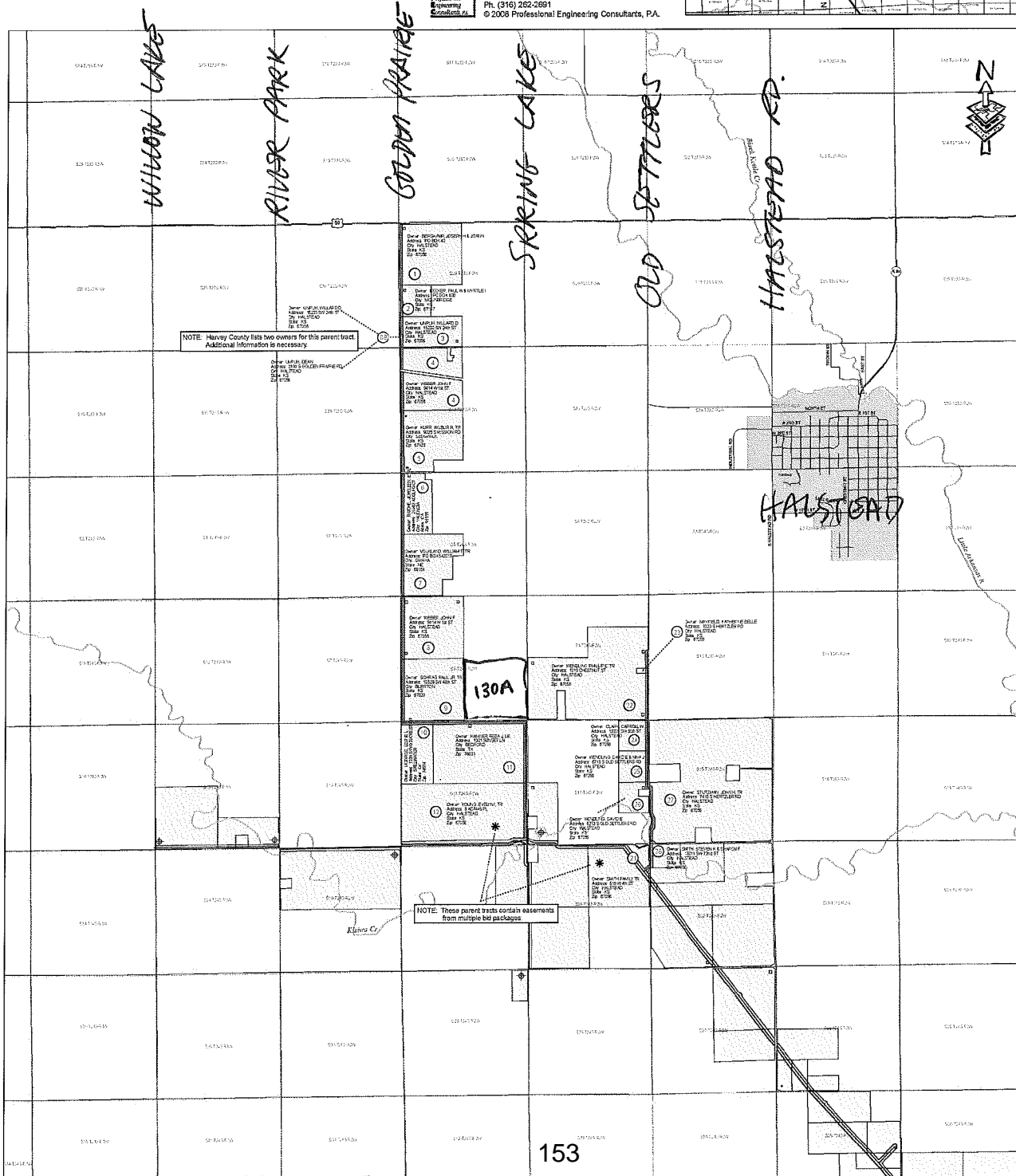
Property Acquisition Map

Legend

- Section Lines
- City Limits
- County Boundaries
- Streets and Roads
- Highways
- Rivers and Streams
- Parent Tracts
- Bid Package 1 Easements
- Bid Package 2 Easements
- Bid Package 3 Easements
- Well Location
- RR # Well ID Number
- # Parent Tract ID Number



Q:\2007\076858\Parent\GISASR Bid Package2 Easements.mxd
 Last saved 2/22/2009 by SAD
 NAD_1983_StatePlane_Kansas_South_FIPS_1502_Feet
 Projection: Lambert_Conformal_Conic
 Professional Engineering Consultants, P.A.
 333 S. Topolia
 Wichita, KS 67202
 Ph. (316) 262-2691
 © 2008 Professional Engineering Consultants, P.A.



CITY OF WICHITA
City Council Meeting
October 26, 2010

TO: Mayor and City Council

SUBJECT: Acquisition of 1352 North Minneapolis for the East 13th Street, Hydraulic to Oliver Road Improvement Project (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On November 6, 2007, the City Council approved the design concept and proposed project to widen East 13th Street North between Hydraulic to Oliver. The project will require the acquisition of all or part of 79 tracts. The improvements include adding a center turn lane, relocating the sidewalks away from the back of the curb, improving the storm sewer system and landscaping. The property at 1352 North Minneapolis is improved with 1,045 square foot single-family residence. The project will physically impact the improvements, necessitating the acquisition of the entire property.

Analysis: The owner rejected the appraised value of \$75,000 (\$71.77 per square foot) and instead, provided a copy of another appraisal to the City valuing the subject property at \$85,000 (\$81.34 per square foot). The second appraisal at \$85,000 was reasonable. The property owner agreed to accept this amount. The owner currently occupies the residence and will be eligible for relocation assistance.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$106,800 is requested. This includes \$85,000 for the acquisition, \$16,000 for relocation, \$5,000 for demolition, and \$800 for title work and other administrative fees.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving the traffic flow through a major transportation corridor.

Legal Considerations: The Law Department approved the agreement as to form.

Recommendation/Action: It is recommended that the City Council 1) Approve the agreement and; 2) Authorize the necessary signatures.

Attachments: Real estate purchase agreement, tract map and aerial map.

PROJECT: 13th Street North DATE: October 6, 2010

COUNTY: Sedgwick TRACT NO.: 120

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE
OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 6th day of October, 2010, by and between

Elecia G. McFadden, a single person

1352 Minneapolis Ave.

Wichita, KS 67214

(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 14,000 Sq. Ft. for Right of Way
Damages including but not limited to all
improvements and real property of the
landowner:

\$ 85,000.00

TOTAL: \$ 85,000.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: Elecia G. McFadden
Elecia G. McFadden

THE CITY OF WICHITA

By: _____

MEMORANDA

Exact and full name of owner, as name appears of record:

Elecia G. McFadden

If mortgage or other liens, show names of holders:

Neighborhood Housing Services of America, Inc., the City of Wichita and the State of
Kansas, ex rel., Marquez A. Kelly, the minor child, and the Secretary of SRS

REMARKS:

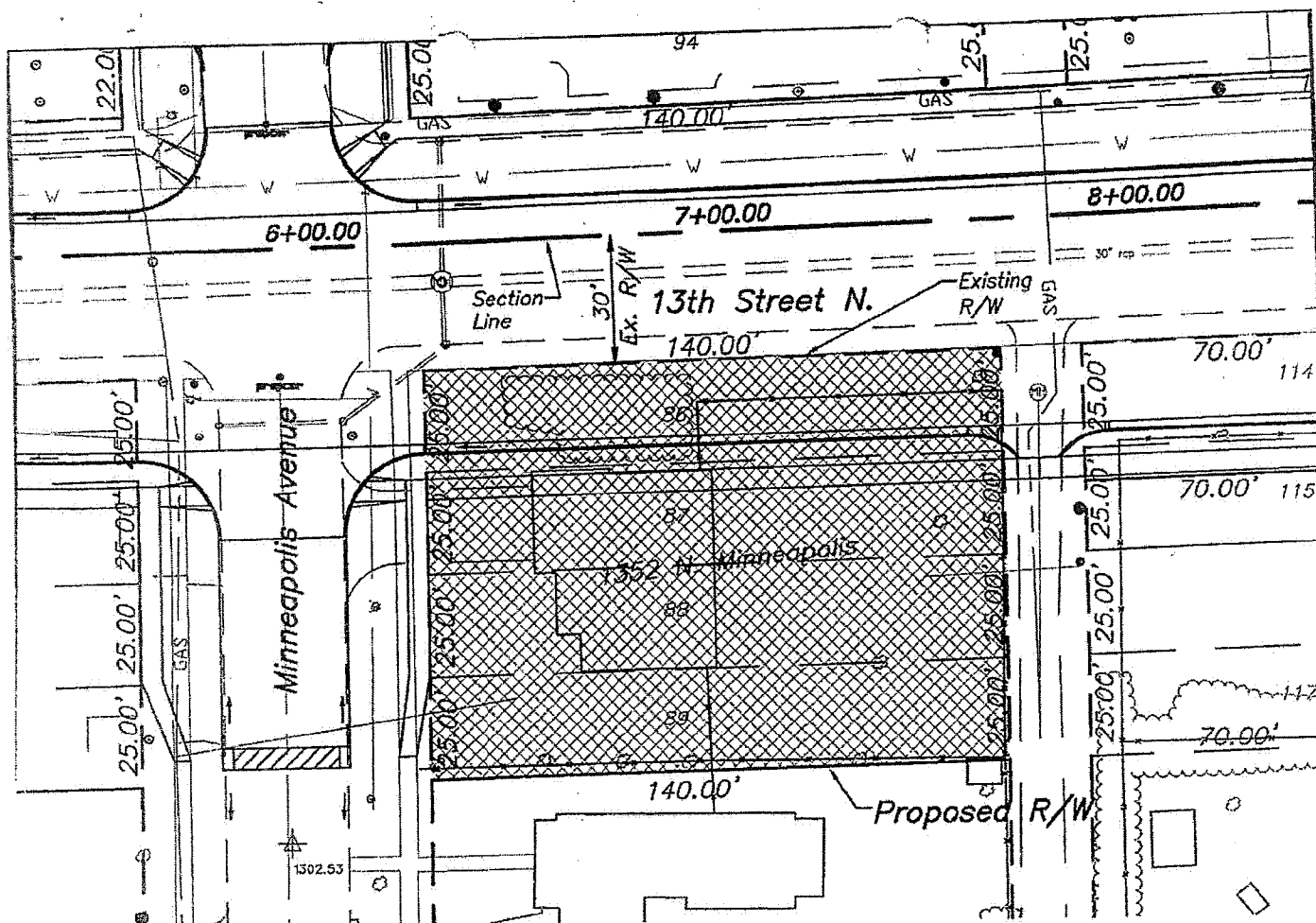
PIN/APN 125150220200400 and 125150220200300
Security Title File Number 200824

APPROVED TO FORM:

Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

Mia Warlick, Project Manager



PROPOSED R/W ACQ. LEGAL:

All of Lots 86, 87, 88, & 89, Rosenthal's 2nd Addition, an addition to Wichita, Sedgwick County, Kansas.

TAX KEY #: C01022, C01023

R/W ACQUISITION SIZE: 14,000 sq. ft.



PROPOSED R/W ACQUISITION

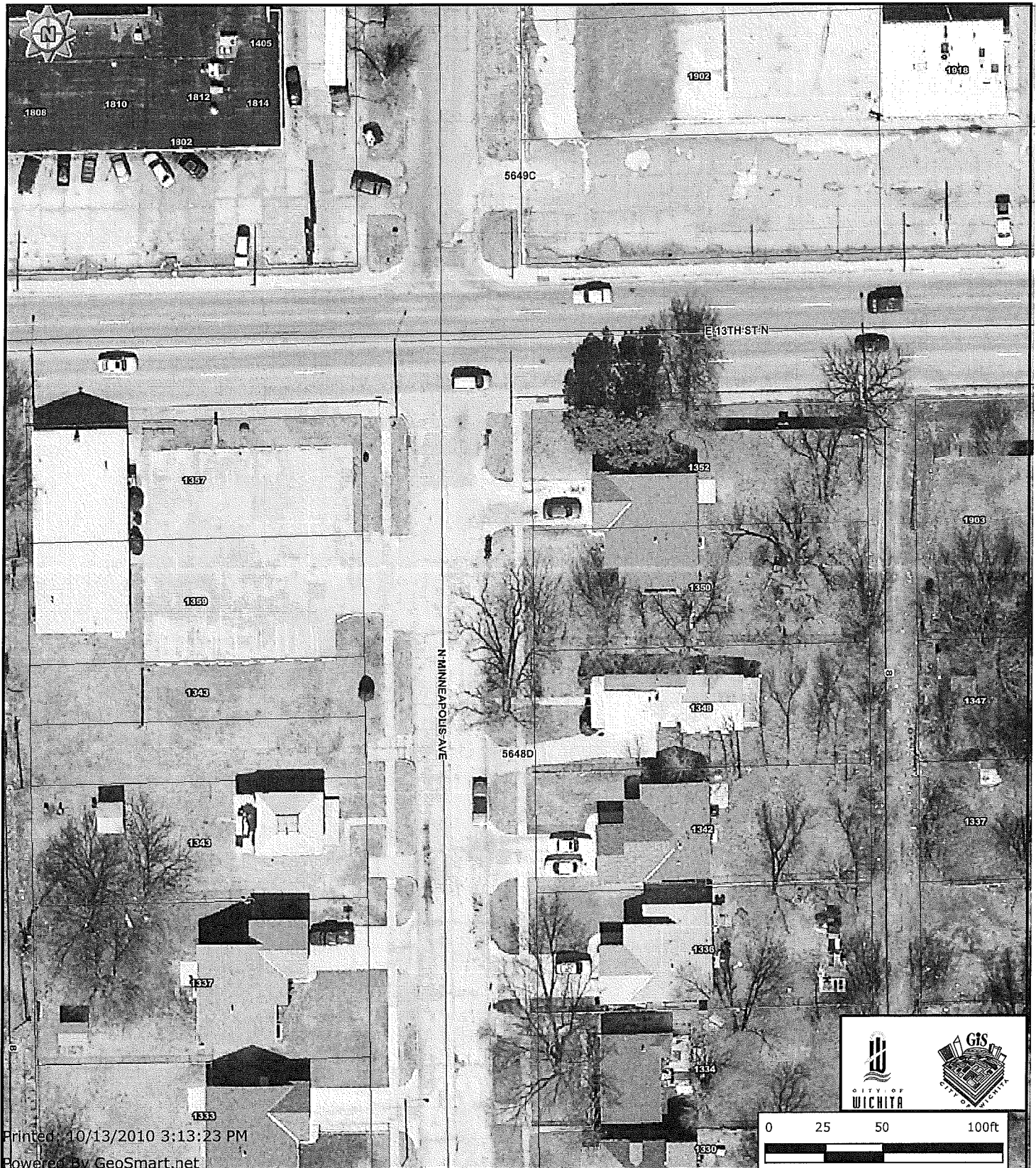
13th STREET
HYDRAULIC AVENUE TO OLIVER
TRACT MAP
ELECIA McFADDEN



SCALE: 1" = 40'

Tract No 120

1352 N Minneapolis



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Powered By GeoSmart.net

Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

CITY OF WICHITA
City Council Meeting
October 26, 2010

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 3309 East 13th Street North for the East 13th Street, Hydraulic to Oliver Road Improvement Project (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On November 6, 2007, the City Council approved the design concept and proposed project to widen East 13th Street North between Hydraulic to Oliver. The project will require the acquisition of all or part of 79 tracts. The improvements include adding a center turn lane, relocating the sidewalks away from the back of the curb, improving the storm sewer system and landscaping. The property at 3309 East 13th Street is improved with a single-family residence. From the north portion of the property, the City requires the north 25 feet as road right-of-way. A temporary construction easement is also required. The improvements are removed from the project and will not be impacted. Within the proposed right-of-way are numerous mature trees, mature landscaping, concrete pillars and an in-ground sprinkler system.

Analysis: The owners agreed to convey the proposed acquisition for the appraised value of \$6,025 in addition to \$5,975 for damages to the in-ground sprinkler system, mature trees within the temporary easement, mature landscaping and concrete pillars. The proposed acquisition area (consisting of 3,269 square feet) was valued at \$1,145, or at \$0.35 per square foot. The temporary easement (consisting of 2,615 square feet) valued at \$130, or \$0.05 per square foot. While the appraiser did attribute \$4,750 for the trees within the right-of-way, the appraiser did not allow for any damages to the property within the temporary easement. It is estimated that there are an equal amount of trees on each end of the temporary easement compared to the number of trees within the proposed right-of-way. The additional \$5,975 the owner agreed to is comprised as \$4,000 for trees, \$1,500 for the two concrete pillars and \$475 for the sprinkler system and mature landscaping.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$12,800 is requested. This includes \$12,000 for the acquisition and \$800 for title work and other administrative fees.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving the traffic flow through a major transportation corridor.

Legal Considerations: The Law Department approved the agreement as to form.

Recommendation/Action: It is recommended that the City Council 1) Approve the agreement and; 2) Authorize the necessary signatures.

Attachments: Real estate purchase agreement, tract map and aerial map.

PROJECT: 13th Street North DATE: October 8, 2010
COUNTY: Sedgwick TRACT NO.: 70

THE CITY OF WICHITA, KANSAS
CONTRACT FOR CONVEYANCE
OF REAL ESTATE BY WARRANTY DEED
AND TEMPORARY EASEMENT

THIS AGREEMENT Made and entered into this 8th day of October, 2010,, by
and between

Jeremiah C. Leathers and Kelly J. Leathers, husband and wife
3523 N. Athenian St.
Wichita, KS 67204

(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Together with a temporary construction easement (3 years) on the following described property

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 3,269 Sq. Ft. for Right of Way
Damages including but not limited to all
improvements and real property of the
landowner:

\$ 11,870.00

Approximately 2,615 Sq. Ft. for Temporary Easement
Damages including but not limited to all
improvements and real property of the
landowner:

\$ 130.00

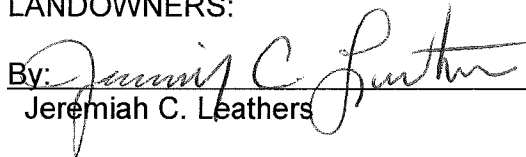
TOTAL:

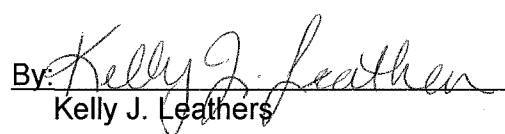
\$ 12,000.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: 
Jeremiah C. Leathers

By: 
Kelly J. Leathers

CITY OF WICHITA

ATTEST:

By: _____
Carl Brewer, Mayor

Karen Sublett, City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:

Jeremiah C. Leathers and Kelly J. Leathers, husband and wife

If mortgage or other liens, show names of holders:

Mortgageit, Inc. (MERS, as nominee for lender)

REMARKS:

PIN/APN 126140220400200

Security Title File Number 1090487

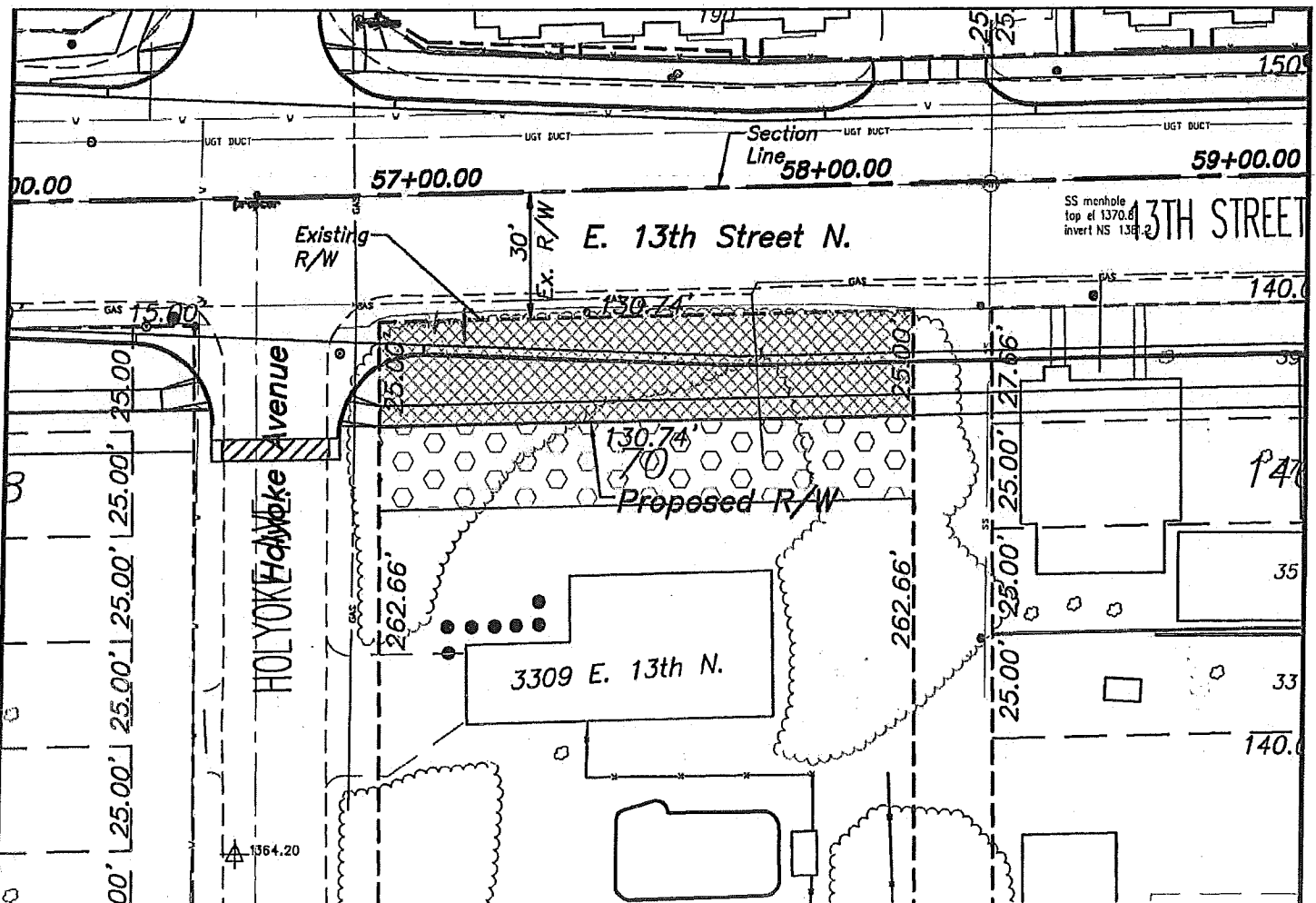
APPROVED TO FORM:

Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:


Mia Warlick, Project Manager

EXHIBIT A R/W



PROPOSED R/W ACQ. LEGAL:

A tract commencing at a point 390 feet East and 30 feet South of the Northwest corner of Section 14, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence South 262.66 feet; thence East 130.74 feet; thence North 262.66 feet; thence West 130.74 feet to the place of beginning.

Beginning at a point 390.00 feet east & 30.00 feet south of the Northwest corner of the Northwest $\frac{1}{4}$ Sec 14-T27S-R1E; thence southerly 25.00 feet along west line of said tract; thence easterly 130.74 feet along a line parallel with the north line of said tract; thence northerly 25.00 feet along east line of said tract; thence westerly 130.74 feet along north line of said tract to the point of beginning.

TAX KEY #: C11113

R/W ACQUISITION SIZE: 3,269 sq. ft.



PROPOSED R/W ACQUISITION

13th STREET
HYDRAULIC AVENUE TO OLIVER
TRACT MAP

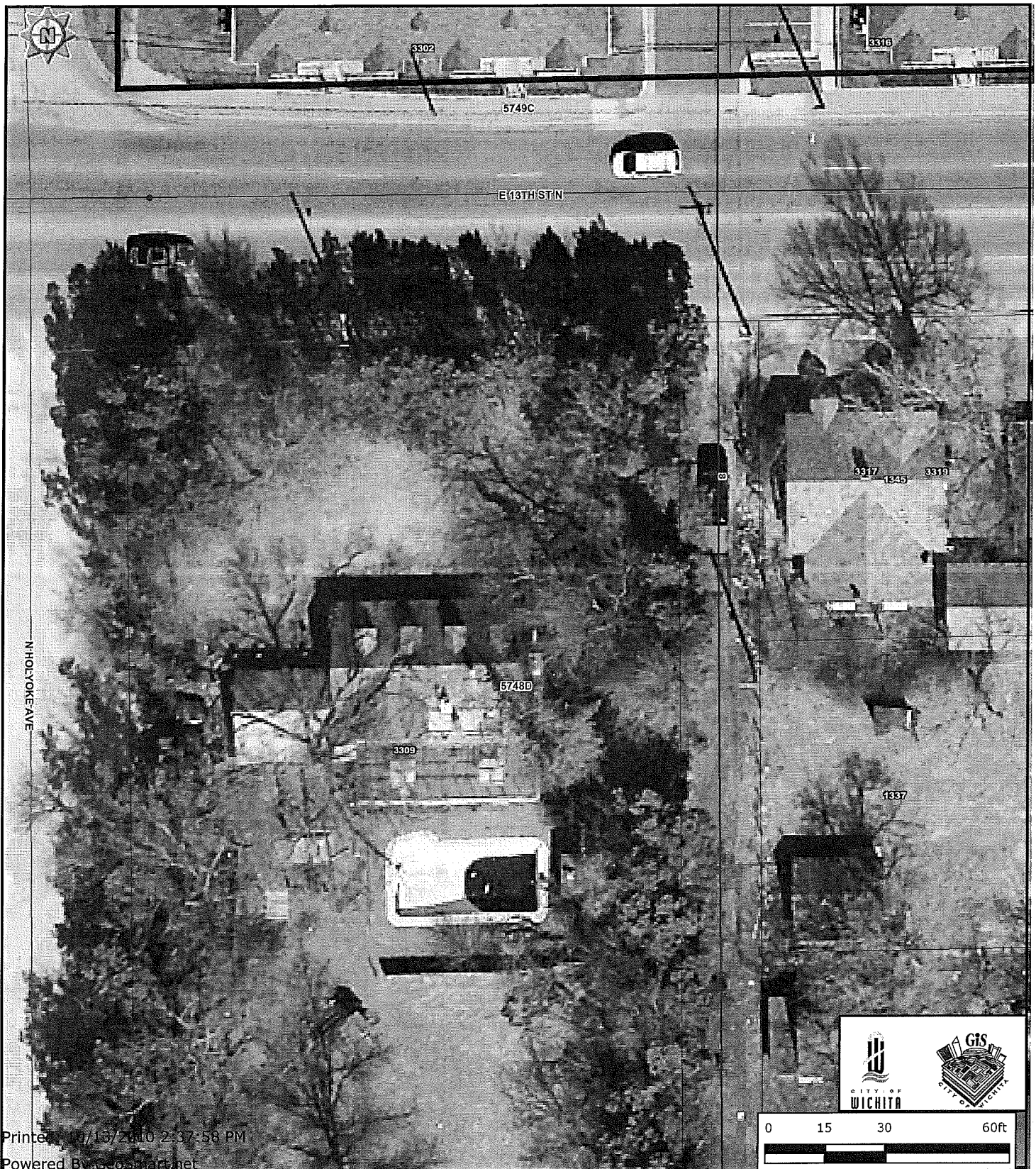
JEREMIAH C. & KELLY J. LEATHERS
SEC 14-T27-R1E



SCALE: 1" = 40'

Tract No. 70

3309 East 13th Street North



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Powered By: Geosmart.net

Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

CITY OF WICHITA
City Council Meeting
October 26, 2010

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Land for Easements at the Southeast Corner of Golden Prairie Road and SW 48th Street for the Integrated Local Water Supply Plan (Harvey County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 3, 1993, the City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River, transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita.

From the property at the southeast corner of Golden Prairie Road and SW 48th Street, the City requires a pipeline easement together with a temporary construction easement. The proposed pipeline easement runs parallel to both the north boundary line and the west boundary line. Together they are comprised of 3.58 acres. The temporary easements adjacent to each pipeline easement are comprised of 3.98 acres. The land is currently vacant and in agricultural production.

Analysis: The seller agreed to convey the necessary easements for \$30,548. This amount is comprised of \$7,160, or \$2,000 an acre for the 3.58 acres of pipeline; \$1,592, or \$400 an acre for the 3.98 acres of the temporary construction easement; and \$21,796 as crop and other damages to the land. The 7.56 acres (3.58 acres pipeline and 3.98 acres temporary easement) will have to be leveled using laser level technology. There is also a drainage way will impacted by the project which will have to be reconstructed.

Financial Considerations: A budget of \$32,048 is requested; this includes \$30,548 for the acquisition, \$1,500 for title work, title insurance, closing costs and administrative fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, which has sufficient funds for the proposed acquisition.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure.

Legal Considerations: The Law Department approved the contract as to form.

Recommendation/Action: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Real estate purchase agreement, tract map and area map.

EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ____ day of _____, 2010 by and between John F. Weber & Ileen L. Weber, husband and wife (joint tentants) and all heirs, successors, and assigns, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Permanent Easement and/or Temporary Construction Easement of the following described real property, situated in Harvey County, Kansas, to wit:

Permanent Easement (Pipeline – Parcel "A") A 50 foot wide easement, the Westerly line of which is coincident with the Easterly line of the 25 foot East half Road Right-of-Way for Golden Prairie Road, near the West side of the Northwest Quarter of Section Eight (8), Township Twenty-four (24) South, Range Two (2) West of the Sixth Principal Meridian, Harvey County, Kansas. EXCEPT road right-of-way AND ALSO EXCEPT 5 acres in square form in the Southwest corner of said Northwest Quarter as conveyed to the City of Wichita by the Deed and Conveyance document recorded in Miscellaneous Book 146 at Page 16 in the records of Harvey County, Kansas. AND ALSO EXCEPT 5 acres in square form in the Northwest corner of said Northwest Quarter as conveyed to the City of Wichita by the Deed and Conveyance document recorded in Miscellaneous Book 146 at Page 16 in the records of Harvey County, Kansas. Said easement contains 1.98 acres, more or less.

A 40 foot wide easement, the Northerly line of which is coincident with Southerly line of the 25 foot South half road right-of-way for SW 48th Street, near the North side of the Northwest Quarter of Section Eight (8), Township Twenty-four (24) South, Range Two (2) West of the Sixth Principal Meridian, Harvey County, Kansas. EXCEPT road right-of-way. AND ALSO EXCEPT 5 acres in square form in the Northwest corner of said Northwest Quarter as conveyed to the City of Wichita by the Deed and Conveyance document recorded in Miscellaneous Book 146 at Page 16 in the records of Harvey County, Kansas. AND ALSO EXCEPT 5 acres in square form in the Northeast corner of said Northwest Quarter as conveyed to the City of Wichita by the Deed and Conveyance document recorded in Miscellaneous Book 146 at Page 16 in the records of Harvey County, Kansas. Said easement contains 1.60 acres, more or less.

Temporary Easement (Construction – Parcel "B") A 50 foot wide easement, the Westerly line of which is 50 feet East of and parallel with the Easterly line of the 25 foot East half Road Right-of-Way for Golden Prairie Road, near the West side of the Northwest Quarter of Section Eight (8), Township Twenty-four (24) South, Range Two (2) West of the Sixth Principal Meridian, Harvey County, Kansas. EXCEPT road right-of-way. AND ALSO EXCEPT 5 acres in square form in the Northwest corner of said Northwest Quarter as conveyed to the City of Wichita by the Deed and Conveyance document recorded in Miscellaneous Book 146 at Page 16 in the records of Harvey County, Kansas. AND ALSO EXCEPT 5 acres in square form in the Southwest corner of said Northwest Quarter as conveyed to the City of Wichita by the Deed and Conveyance document recorded in Miscellaneous Book 146 at Page 16 in the records of Harvey County, Kansas. Said easement contains 1.98 acres, more or less.

A 50 foot wide easement, the Northerly line of which is 40 feet South of and parallel with the Southerly line of the 25 foot South half road right-of-way for SW 48th Street, near the North side of the Northwest Quarter of Section Eight (8), Township Twenty-four (24) South, Range Two (2) West of the Sixth Principal Meridian, Harvey County, Kansas. EXCEPT road right-of-way. AND ALSO EXCEPT 5 acres in square form in the Northwest corner of said Northwest Quarter as conveyed to the City of Wichita by the Deed and Conveyance document recorded in Miscellaneous Book 146 at Page 16 in the records of Harvey County, Kansas. AND ALSO EXCEPT 5 acres in square form in the Northeast corner of said Northwest Quarter as conveyed to the City of Wichita by the Deed and Conveyance document recorded in Miscellaneous Book 146 at Page 16 in the records of Harvey County, Kansas. Said easement contains 2.0 acres, more or less.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Thirty Thousand Five Hundred Forty-eight Dollars and No/100 (\$30,548.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, a temporary construction easement, any and all damages including but not limited to severance, crops at time of construction, crops for one year after initiation of construction, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before September 30, 2010.

6. The Seller agrees to convey the above described premises with any and all personal property removed from within the easement area(s). Seller further agrees that any maintenance and use of said easement shall be in a manner that does not interfere with or endanger the construction, operations and maintenance of Buyer's improvements.

7. Possession to be given to Buyer on date of closing.

8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer will pay 100% closing costs.

9. In the event there are crop damages outside the easement area during construction or, crop damages resulting from the Buyer's other maintenance, operation, replacement or repairs to the pipeline, the Seller hereby agrees to file a claim with the City of Wichita, KS, City Clerk's Office, 455 North Main, Wichita, KS 67202, (316)268-4529.

10. Buyer and Seller hereby agree that Buyer, contractors and assigns will remove, store and reinstall topsoil removed from the easement corridor as a result of construction. Said topsoil, separate from bedding soil, will be temporarily stored within a temporary construction easement. The buyer will undertake to restore the soil to its pre-work condition.

11. Buyer hereby agrees that the finished grade will match the existing grade as it currently exists upon completion of the project.

12. Site Assessment

A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.

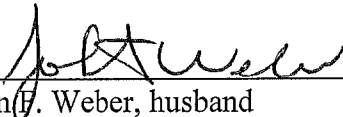
C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.

13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy. Buyer shall not sublease property for any other purpose without seller's permission.

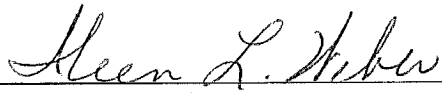
14. Paragraphs 6, 9-11 and 13 shall survive the closing.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:



John F. Weber, husband
tenant in common



Ileen L. Weber, wife
tenant in common

BUYER:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

ADDENDUM
TO
EASEMENT PURCHASE CONTRACT
BETWEEN

John F. Weber & Ileen L. Weber, husband and wife as tenants in common
(Seller)

AND

CITY OF WICHITA, KANSAS (Buyer)

DATED _____, 2010

FOR

PIPELINE EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT IN THE


The Northwest Quarter (NW/4) of Section Eight (8), Township Twenty-four (24) South, Range Two (2) West of the 6th PM, Harvey County, Kansas.

The following provisions are added to the referenced agreement.

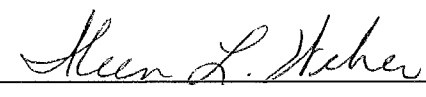
1. The Seller shall have the right to clean their drainage ditches that will pass over the Buyer's Pipe Line.
2. At Seller's option, concrete broken into 8" to 12" pieces from demolished structures shall remain on site. Buyer's pipe line contractor shall coordinate with Seller.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:



John F. Weber, husband
tenant in common



Ileen L. Weber, wife
tenant in common

BUYER:

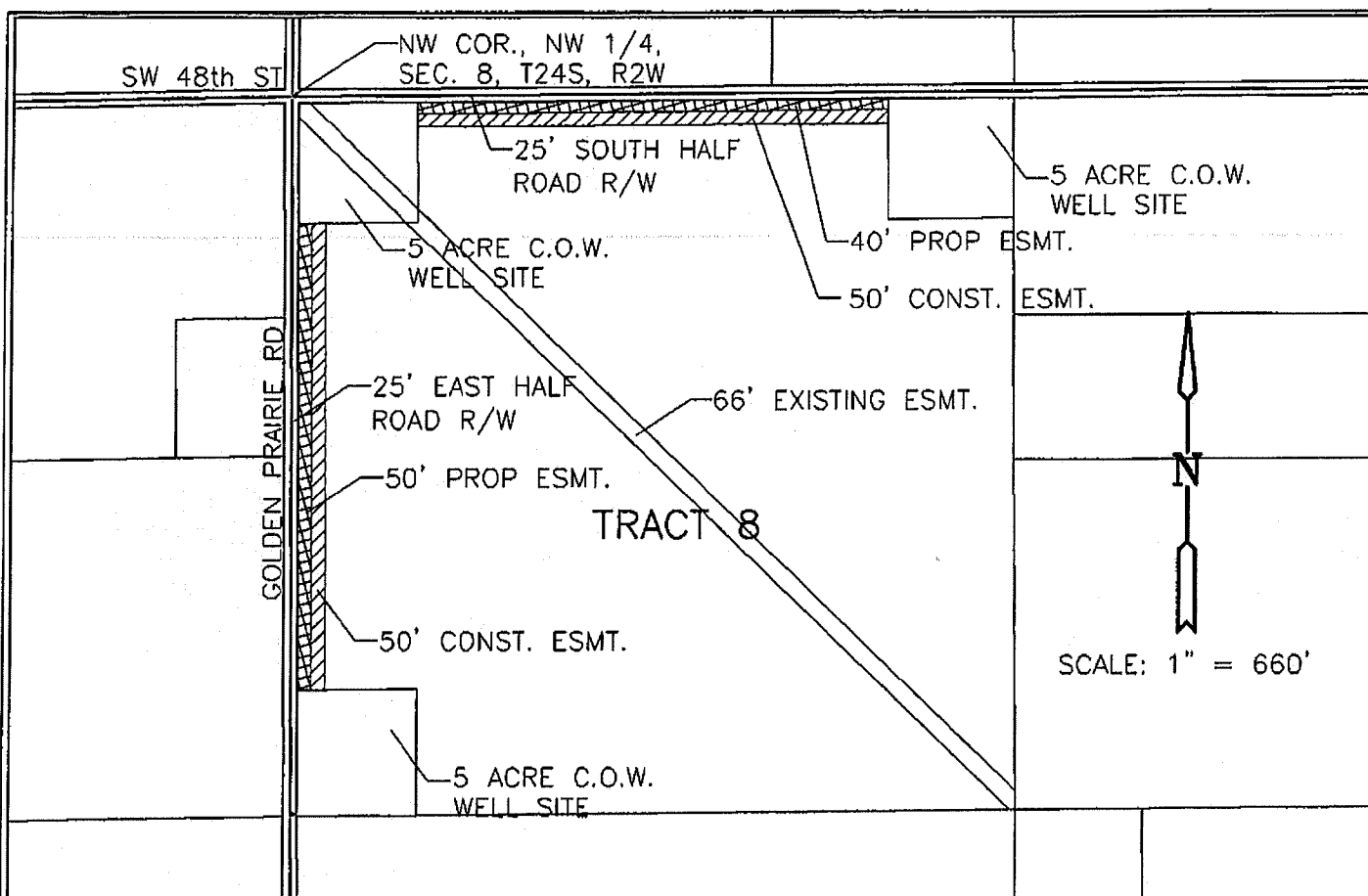
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law





EASEMENT:

A 50 foot wide easement, the Westerly line of which is coincident with the Easterly line of the 25 foot East half Road Right-of-Way for Golden Prairie Road, near the West side of the Northwest Quarter of Section Eight (8), Township Twenty-four (24) South, Range Two (2) West of the Sixth Principal Meridian, Harvey County, Kansas. EXCEPT road right-of-way. AND ALSO EXCEPT 5 acres in square form in the Southwest corner of said Northwest Quarter as conveyed to the City of Wichita by the Deed and Conveyance document recorded in Miscellaneous Book 146 at Page 16 in the records of Harvey County, Kansas. AND ALSO EXCEPT 5 acres in square form in the Northwest corner of said Northwest Quarter as conveyed to the City of Wichita by the Deed and Conveyance document recorded in Miscellaneous Book 146 at Page 16 in the records of Harvey County, Kansas. Said easement contains 1.98 acres, more or less.

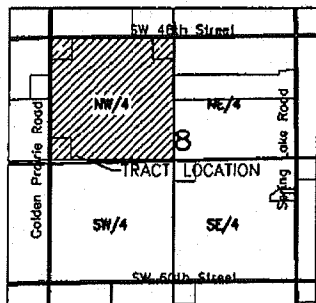
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LEGEND:

-  Construction Easement
-  Easement

OWNER:

WEBER, JOHN F. & ILEEN L.



VICINITY MAP



CDM
Camp Dresser & McKee
347 Riverside, Ste. 600
Wichita, KS 67203
Tel (316) 260-4700
consulting • engineering • construction • operations

P&E
P&E ASSOCIATES, INC.
1000 11TH ST. S.W.
ALBUQUERQUE, NM 87102

THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

GOLDEN PRAIRIE RD. TRANSMISSION MAIN
PROJECT NAME

TRACT 8
SHEET TITLE

JGP MLT WPF
DESIGN BY DRAWN BY CHECKED BY:

SEPTEMBER 2009 788013 1 / 2
DATE JOB NO. SHEET / OF

CONSTRUCTION EASEMENT:

A 50 foot wide easement, the Westerly line of which is 50 feet East of and parallel with the Easterly line of the 25 foot East half Road Right-of-Way for Golden Prairie Road, near the West side of the Northwest Quarter of Section Eight (8), Township Twenty-four (24) South, Range Two (2) West of the Sixth Principal Meridian, Harvey County, Kansas. EXCEPT road right-of-way. AND ALSO EXCEPT 5 acres in square form in the Northwest corner of said Northwest Quarter as conveyed to the City of Wichita by the Deed and Conveyance document recorded in Miscellaneous Book 146 at Page 16 in the records of Harvey County, Kansas. AND ALSO EXCEPT 5 acres in square form in the Southwest corner of said Northwest Quarter as conveyed to the City of Wichita by the Deed and Conveyance document recorded in Miscellaneous Book 146 at Page 16 in the records of Harvey County, Kansas. Said easement contains 1.98 acres, more or less.

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CDM

Comp. Driv. & L. & L. & L.
3400 Filbert, S.W. 830
Wichita, KS 67203

Tel (316) 880-4700

consulting • engineering • construction • operations



FOR ASSOCIATES, INC.
CDM PROJECT MANAGEMENT

THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

GOLDEN PRAIRIE RD. TRANSMISSION MAIN
PROJECT NAME

TRACT 8

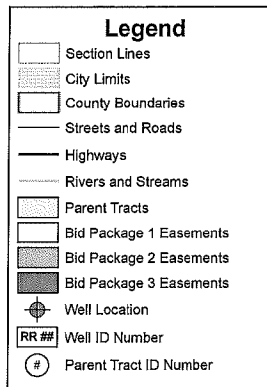
SHEET TITLE

JGP MLT WPF
DESIGN BY DRAWN BY CHECKED BY:

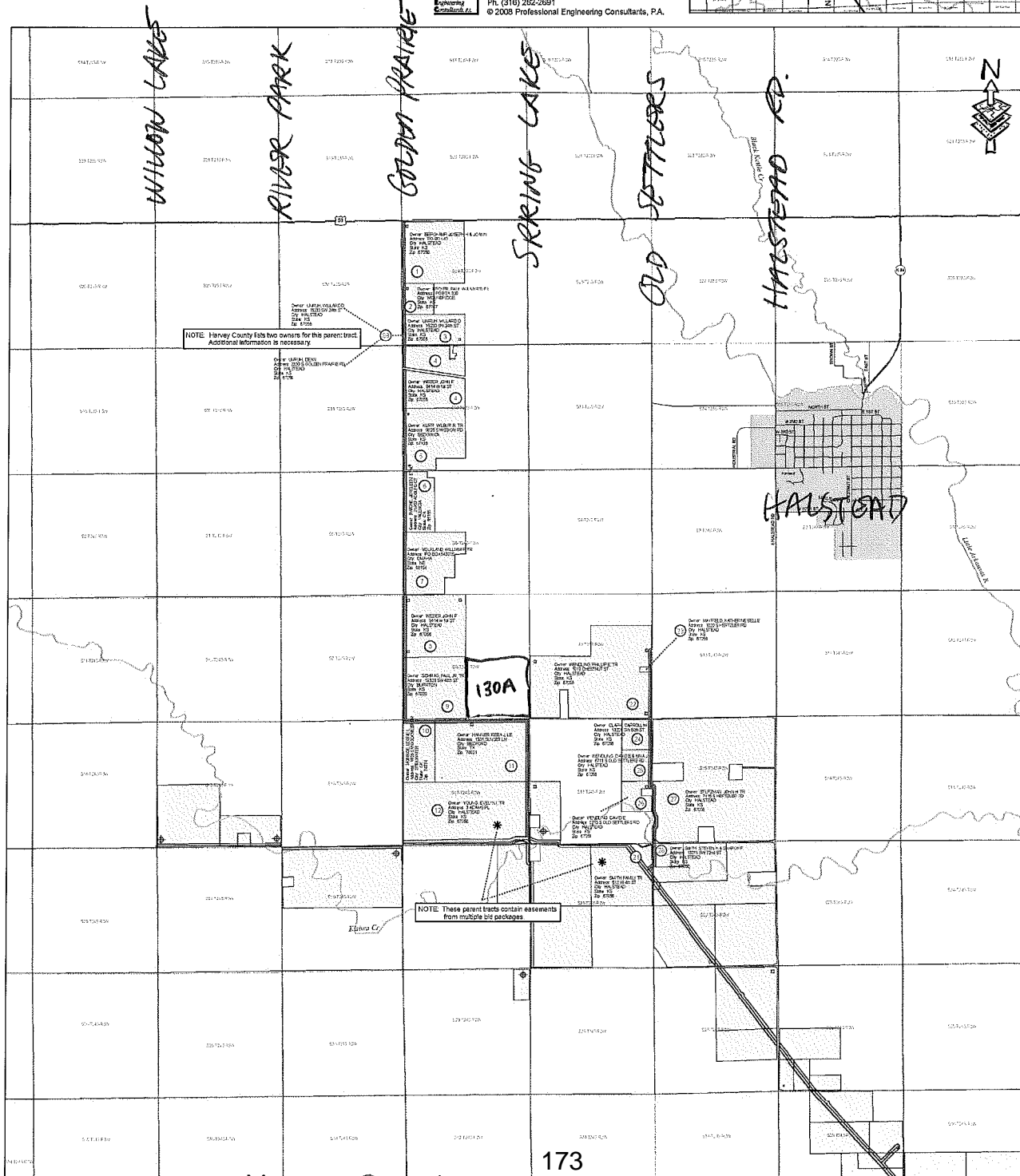
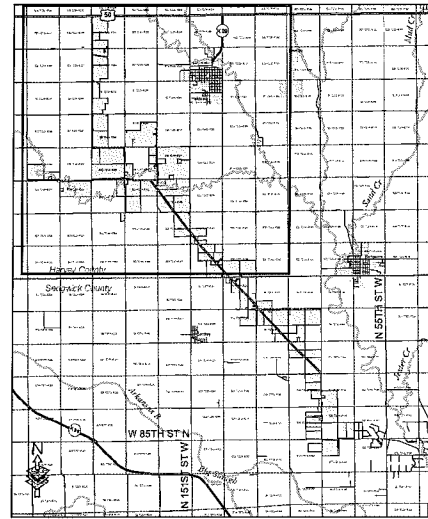
SEPTEMBER 2009 788013 212
DATE JOB NO. SHEET OF



BID PACKAGE 3 Property Acquisition Map



Q:\2007\07686\Brent\Project GIS\ASR Bid Package2 Easements.mxd
Last saved 2/22/2009 by SAD
NAD_1983_StatePlane_Kansas_South_FIPS_1502_Feet
Projection: Lambert_Conformal_Conic
Professional Engineering Consultants, P.A.
303 S. Topoka
Wichita, KS 67202
Ph. (316) 262-2691
© 2008 Professional Engineering Consultants, P.A.



CITY OF WICHITA
City Council Meeting
October 26, 2010

TO: Mayor and City Council

SUBJECT: Partial Acquisition for Right-of-Way at 1958 South 119th Street West for the 119th Street, Pawnee Avenue to Kellogg Improvement Project (District IV)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On May 11, 2010, the City Council approved the design concept and the funding to acquire right-of-way for the road improvement project 119th Street between Pawnee and Kellogg. The project will provide four through lanes on 119th Street and a traffic signal at the intersection of Pawnee and 119th. Landscaped medians, sidewalks and a bike path will also be constructed. The corridor is improved with residential properties, agricultural land and a church. The property at 1958 South 119th Street is improved with a single-family residence on a 1.75 acre site. The project requires the west 10 feet of the property. The proposed right-of-way acquisition consists of 2,757 square feet. The improvements will not be impacted by the proposed acquisition but a paved parking area will be impacted and several trees and shrubs will be removed.

Analysis: The owner agreed to convey the necessary right-of-way and easements for \$12,500. This consists of the \$5,500 (\$2.00 per square foot) for the right of way, \$5,000 for the trees and shrubs that are being removed and \$2,000 for the impact on the drives and paving.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$13,000 is requested. This includes \$12,500 for acquisition and \$500 for closing costs and title insurance.

Goal Impact: The acquisition of this right-of-way is necessary to ensure Efficient Infrastructure by improving an arterial street through a rapidly developing part of the City.

Legal Considerations: The Law Department approved the real estate purchase agreement as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Real Estate Agreement; 2) Authorize all necessary signatures; and 3) Approve the budget.

Attachments: Real Estate Agreement, tract map and aerial map.

REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this 6th day of October, 2010 by and between Kari L. Thome, a single person, hereinafter referred to as "Seller," whether one or more, and City of Wichita, a municipal corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient warranty deed for the following described real property as road right-of-way, drainage easement, temporary construction easement and damages including but not limited to: trees and shrubs, all situated in Sedgwick County, Kansas, to wit:

RIGHT-OF-WAY:

The East 10 feet of the West 50 feet of the North 275.7 feet of the Southwest Quarter of Section 31, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, containing 0.063 acres (2,757.00 sq. ft.), more or less.

2. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to him of the above described real properties and any damages to the remainder, the sum of Twelve Thousand Five Hundred Dollars and No Cents (\$12,500) in the manner following, to-wit: cash at closing.

4. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title. Buyer will order title at its cost.

5. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

6. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before November 30, 2010.


8. The Seller further agrees to convey the above described premises with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted.

9. Possession to be given to Buyer on closing date.

10. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by seller and 100% by buyer. Buyer will pay 100% closing costs.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:


Kari L. Thome

BUYER:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law



WICHITA

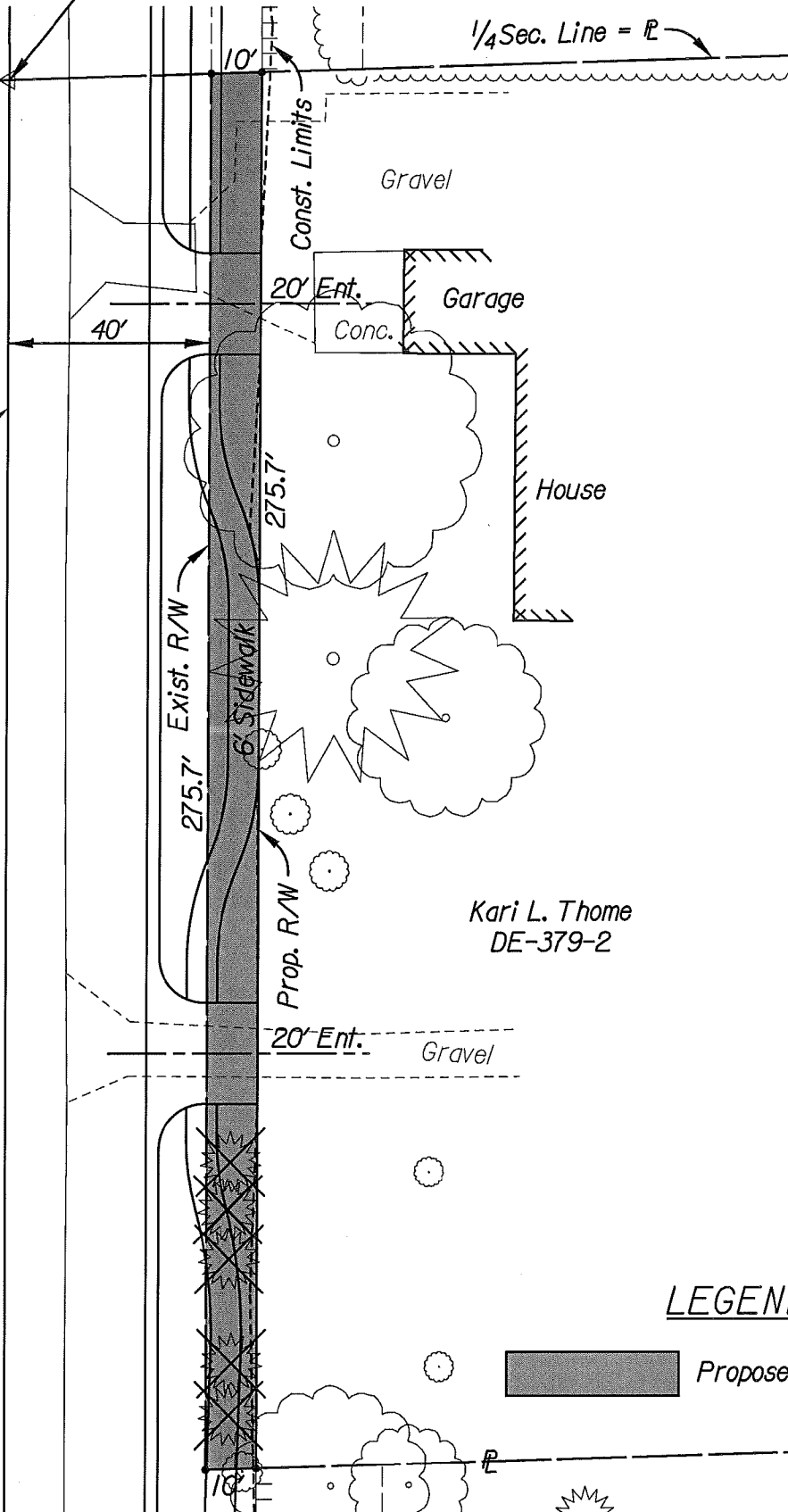
E Cor., Sec. 36, T27S, R2W

TRACT MAP DE-379-2

RIGHT OF WAY

1/4 Sec. Line = R

119th St. W. = Section Line



(Not to Scale)

Kari L. Thome
DE-379-2

LEGEND

Proposed Right of Way

Mar. 3, 2010

CITY OF WICHITA
City Council Meeting
October 26, 2010

TO: Mayor and City Council

SUBJECT: Acquisition of 1358 North Crestway for the East 13th Street, Hydraulic to Oliver Road Improvement Project (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On November 6, 2007, the City Council approved the design concept and proposed project to widen East 13th Street North between Hydraulic to Oliver. The project will require the acquisition of all or part of 79 tracts. The improvements include adding a center turn lane, relocating the sidewalks away from the back of the curb, improving the storm sewer system and landscaping. The property at 1358 North Crestway is improved with an 825 square foot single-family residence. The project will physically impact the improvements, necessitating the acquisition of the entire property.

Analysis: The property was appraised for \$60,000 (\$72.72 per square foot of improvements) and the owner has agreed to accept this amount. The owner currently occupies the property and will be eligible for relocation assistance.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$85,500 is requested. This includes \$60,000 for the acquisition, \$20,000 for relocation, \$5,000 for demolition and \$500 for title work and other administrative fees.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving the traffic flow through a major transportation corridor.

Legal Considerations: The Law Department has approved the agreement as to form.

Recommendation/Action: It is recommended that the City Council 1) Approve the agreement and; 2) Authorize the necessary signatures.

Attachments: Real estate purchase agreement, tract map and aerial map.

PROJECT: 13th Street North DATE: October 5, 2010
COUNTY: Sedgwick TRACT NO.: 162

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE
OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 5th day of October, 2010, by and between

Jerry M. Lively, a single person

1358 North Crestway

Wichita, KS 67214

(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 7,889 Sq. Ft. for Right of Way
Damages including but not limited to all
improvements and real property of the
landowner:

\$ 60,000.00

TOTAL: \$ 60,000.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: Jerry M. Lively
Jerry M. Lively, a single person

THE CITY OF WICHITA

By: _____
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:

Jerry M. Lively

If mortgage or other liens, show names of holders:

Capitol Federal Savings Bank

REMARKS:

PIN/APN 126140110400200
Security Title File Number 2001310

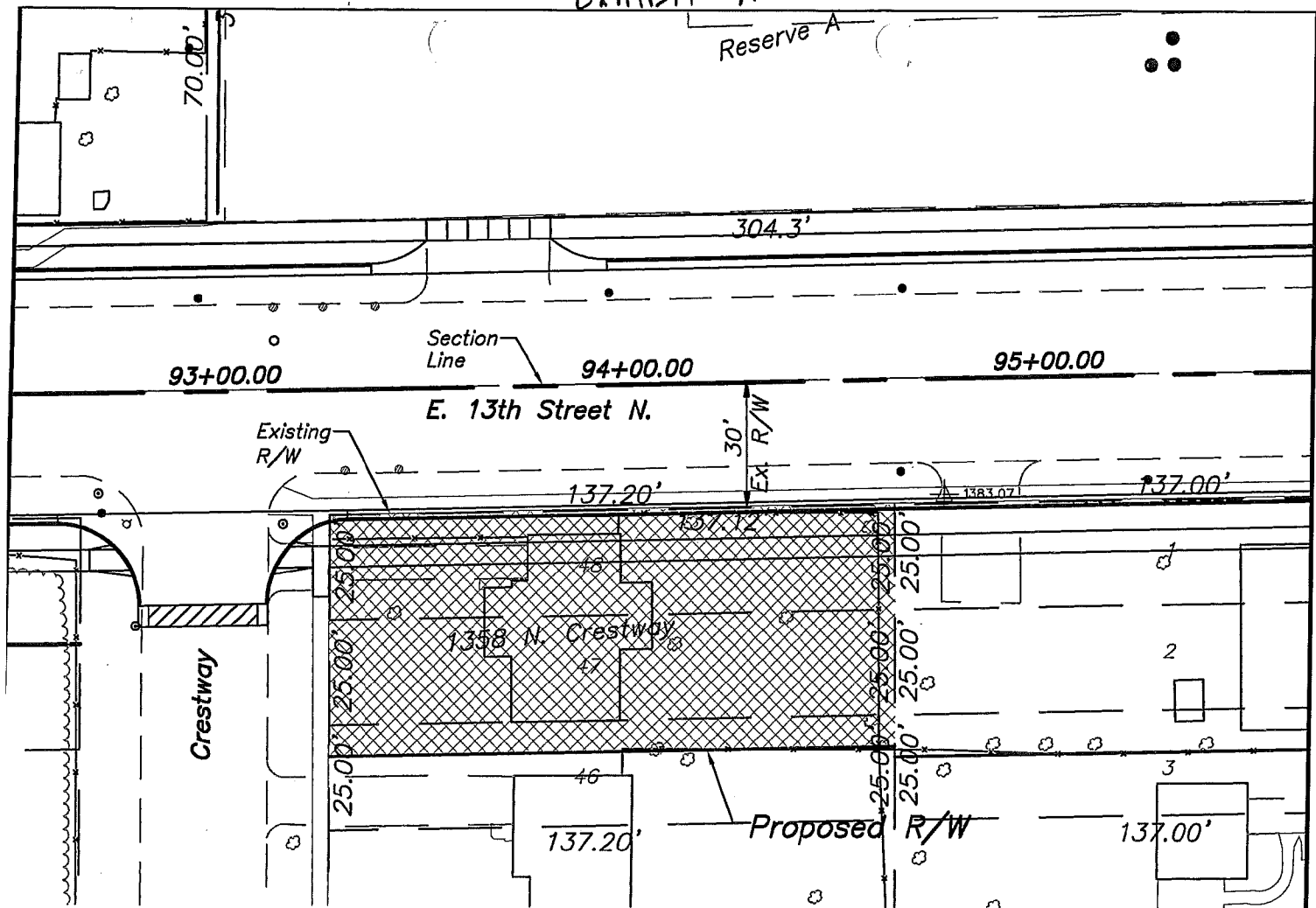
APPROVED TO FORM:

Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

Mia Warlick
Mia Warlick, Project Manager

EXHIBIT A



PROPOSED R/W ACQ. LEGAL:

Part of Lot 46 and All of Lots 47 & 48, Block 4, Country Club Heights Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows.

All of the North 7.50 feet of Lot 46 and All of Lots 47 & 48, Block 4, Country Club Heights Addition.

TAX KEY #: C143440008

R/W ACQUISITION SIZE: 7,889 sq. ft.



PROPOSED R/W ACQUISITION

13th STREET
HYDRAULIC AVENUE TO OLIVER
TRACT MAP

JERRY LIVELY
SEC 14-T27-R1E

182



SCALE: 1" = 40'

Tract No. 162

1358 N Crestway



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



DEPARTMENT OF LAW
INTEROFFICE MEMORANDUM

TO: Karen Sublett, City Clerk
FROM: Gary E. Rebenstorf, Director of Law
SUBJECT: Report on Claims for September, 2010
DATE: October 8, 2010

The following claims were approved by the Law Department during the month of September 2010.

Aversa, Peter	\$1,800.00
Aversa, Peter	\$1,350.00
Broadfoot, Fred	\$ 67.16
Carrillo, Emily	\$ 950.72
Cassell, Jack	\$2,046.15
Cassell, Matt	\$2,064.27
Collins, Beth	\$ 294.90
Gaspard, Quinton	\$ 834.15
Horsch, Danielle	\$1,426.40
Johnson, Thomas	\$1,474.04
Malone, Shelly	\$1,277.30
Morales, Norma	\$ 266.02**
Nguyen, Thien	\$ 848.10
Parker, John	\$ 15.26
Reed, Greg	\$1,381.60
Thornberg, Marie	\$1,637.40
USD 259	\$9,992.00*
Whitaker, Alan	\$ 979.33

*City Manager Approval

** Settled for lesser amount than claimed

***Settled for more than amount claimed

cc: Robert Layton, City Manager
Kelly Carpenter, Director of Finance

City of Wichita
City Council Meeting
October 26, 2010

TO: Mayor and City Council

SUBJECT: Contract for Pre-Employment and Fit-for Duty Assessments
(All Districts)

INITIATED BY: Police Department

AGENDA: Consent

Recommendation: Approve the contract.

Background: The Wichita Police Department has a continual need to contract for pre-employment assessments, fitness-for-duty assessments, and assessment of employees for transfer to specialty units. The current contract for these services expires October 14, 2010.

Analysis: A request for Proposal (FP030056) was issued to secure a qualified contractor; and four proposals were received. A selection committee comprised of City staff and a Wichita State University Psychology Department professor evaluated the proposals. Based upon experience, qualifications, proposal specifications, level of service, and cost, the selection committee recommends River Park Psychological Consultants, LLC.

Financial Considerations: The funding for pre-employment and fit-for-duty assessment is included in the Police Department's budget.

Goal Impact: Provide a safe and secure community by providing essential services to police applicants and current department members for fit-for-duty assessments.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendations/Actions: It is recommended that the City Council approve the contract and authorize the necessary signatures.

Attachments: Professional Services Contract –River Park Consultants, LLC

CONTRACT

For

PROFESSIONAL SERVICES

Between

THE CITY OF WICHITA, KANSAS

WICHITA POLICE DEPARTMENT

and

RIVER PARK PSYCHOLOGY CONSULTANTS, LLC

THIS CONTRACT, made this 26th day of October 2010, by and between THE CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and RIVER PARK PYSCHOLOGY CONSULTANTS, LLC party of the second part, hereafter called the "CONTRACTOR."

WITNESSETH:

WHEREAS the CITY has identified the need for Pre-Employment and Fit-for-Duty Assessments to be provided to the Wichita Police Department; and

WHEREAS, CONTRACTOR has available and offers to provide the necessary professional services pursuant to a Request For Proposal #FP030056 to provide pre-employment services for police applicants, fitness-for-duty assessments, and assessment of suitability for candidates for transfer to specialty units; and

WHEREAS, the CITY is authorized to employ pre-employment and fit for duty services for the Wichita Police Department;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

- A. The CONTRACTOR shall furnish professional services as set out in their Proposal #FP030056 as approved by City Council on October 26, 2010.
- B. This Contract is contingent upon the maintenance of the proper certifications and licenses for mental health care providers of the State of Kansas by the CONTRACTOR and its employees during the term of the contract, and the loss of said certifications and/or licenses by CONTRACTORS' employees, or any one of them, may be grounds for immediate termination of the contract by the CITY.
- C. CONTRACTOR shall provide pre-employment assessments for police applicants. To comply with Kansas law, the CITY requires that psychological testing be performed on all Police Recruits who have received conditional employment offers. In addition, assessment of suitability for candidates for transfer to specialty unit, and, for fit-for-duty assessment for mandated supervisor referrals.
- D. Assess approximately 40-60 Police Recruit applicants, Warrant Officer applicants, and Reserve officer applicants annually in the following areas:
 - Career interest
 - Cognitive ability
 - Psychopathology
 - Personality traits
 - Intellectual functioning
 - Multi-tasking ability
 - Writing ability
 - Verbal skills
- E. Counseling services will normally be provided by a Licensed Specialist Clinical Social Worker (LSCSW) or PhD therapist (clinical psychologist). Crisis counseling services will be requested by the CITY on behalf of an individual employee in response to a critical event, or series of events. This involves determining if the employee has the ability to perform daily responsibilities and/or duties.

- F. If during the course of providing crisis counseling services, CONTRACTOR determines that a medical referral is needed for medication or other purpose, the first referral option will be the employee's or family member's primary care physician designated through his/her private healthcare insurance provider. If this is not a viable option, the referral may be made to one of the CONTRACTOR'S Advanced Registered Nurse Practitioners (ARNP), Physician Assistants (PA) or Medical Doctors (MD/psychiatrist). However, the City will not be responsible for any medication expenses.
- G. Upon request of the Chief of Police, the CONTRACTOR shall provide written determination, within forty-five working days to the Chief of Police, of the suitability of an officer for return to duty after involvement in a critical event or after an internal investigation results in disciplinary or corrective action by the CITY. Written assessments shall include a written summary of the counseling and assessment tests provided, along with the results, which form the basis for the written opinion and will normally be provided by a LSCSW or clinical psychologist. Any exception will be discussed and approved in advance of the assessment. The CITY reserves the right to request additional tests or re-testing for suitability determinations.
- H. CONTRACTOR shall provide a written determination within forty-five working days of the suitability of officers to transfer to special units, such as, but not limited to; the bomb unit, specialized weapons and tactics team (SWAT), special investigations bureau, as requested by the Chief of Police, or his or her designee.
- I. CONTRACTOR shall submit a monthly report by the 20th day of each month, which indicates the name of the applicant, instruments administered, analysis of results, and a conclusive statement about the applicants' suitability for the position. The report will be submitted to the Deputy Chief of the Support Services Division, detailing the activities of the

CONTRACTOR in sufficient detail, as may be specified, to include a breakdown of hours spent by CONTRACTOR'S personnel in activities related to this contract. CONTRACTOR shall attend quarterly meetings (when deemed necessary), with the Deputy Chief of the Support Services Division and the Training Bureau Commander.

- J. Assessments and reports will be concentrated with approximately 15 to 30 applicants in a six-week time-period, twice each year, during the pre-employment process. Normally this occurs from late April through mid-June, and late October through mid-December. These numbers may be higher or lower, depending upon future attrition experience, newly funded positions, etc. The testing cycle is also subject to change, based upon future hiring and training needs.
- K. Testing and assessment instruments will only be administered by personnel from the selected vendor.
- L. Provide at no cost, an orientation for the Wichita Police Department Training Bureau staff on the fundamentals of the tests/instruments employed; and information on how to interpret the scores and reports will be provided.
- M. Retests or follow-up interviews shall be conducted in Wichita, Kansas at a location that has been approved by the Wichita Police Department.
- N. The CITY retains the right to approve the location at which services are to be provided under this contract.

II. CONTRACTOR'S ADDITIONAL OBLIGATIONS AND DUTIES

- A. To provide the professional, technical, administrative and secretarial services to perform the tasks as outlined in Scope of Services.
- B. To make available during regular office hours for viewing or copying, all records, documents and other written material as the CITY may wish to examine periodically during performance of this agreement. Confidential psychological records will be released upon presentation of a release of information.

- C. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of CONTRACTOR, its agents, servants, employees, or subcontractors occurring in the performance of its service under this contract or from any cause of action alleging violation of copyright, trademark, servicemark or other proprietary interest in materials used by CONTRACTOR in the performance of services under this agreement.
- D. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by CONTRACTOR and payments by the CITY during the contract period, and for three (3) years from the date of final payment under the contract for inspection by the CITY or its authorized representatives.
- E. To comply with all federal, state and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1974, and to comply with the CITY'S "Revised Non-Discrimination and Equal Employment Opportunity Statement For Contracts Or Agreements" as set forth in Exhibit "A" which is attached hereto and adopted by reference as though fully set forth herein.
- F. To accept compensation for the work herein described in such amounts and at such periods as hereinafter provided and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- G. To submit periodic billings to the CITY of the costs accrued in the performance of the services herein described.
- H. CONTRACTOR shall be responsible for the professional and technical accuracies of the work or material furnished to the CITY by the CONTRACTOR under this agreement.

- I. CONTRACTOR further agrees, covenants and represents that all work or material furnished by CONTRACTOR, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligence.
- J. CONTRACTOR agrees that its personnel will be available at all reasonable times for conferences and consultation with the City Manager, the City Attorney and/or the Chief of Police of the Wichita Police Department throughout the term of this Contract.
- K. CONTRACTOR and its professional employees agree to maintain professional liability insurance coverage during the term of this Contract, and any renewals, with the limits of such coverage to be not less than \$500,000, per occurrence. CONTRACTOR shall procure and maintain a Worker's Compensation Policy and Employer's Liability Policy. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Worker's Compensation Law. In addition, insurance policies specified herein shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or cancelled.
- L. CONTRACTOR and its employees agree that they will not discriminate against any person in the performance of services under this agreement because of race, color, sex, religion, national origin, ancestry, marital status, age or physical disability, except where age or physical disability is a bona fide occupational qualification.
- M. CONTRACTOR agrees to maintain the confidentiality of all tests, test results, assessments, interview notes, and statements of City employees in accordance with State and Federal laws and regulations, and the ethics of the profession, except that CONTRACTOR agrees to disclose to the City Manager, City Attorney, and Chief of Police all tests, test results, assessments, interview notes, and statements of CITY employees for use in connection with employment decisions and litigation involving the CITY or its employees.

N. CONTRACTOR agrees to notify the CITY of any significant personnel changes of the CONTRACTOR, which are likely to affect the provision of services under this Contract.

III. COMPENSATION AND PAYMENT

A. The charges for professional services related to pre-employment assessments, fitness-for-duty assessments, assessment of suitability of candidate for specialty units and training will be based on the actual hours spent in the activity to the nearest tenth of an hour. Time spent by CONTRACTOR'S personnel in preparation for counseling, assessments, or in telephonic communication with clients, or employees of the CITY shall not be charged to the CITY. Unless approved in advance by the CITY, all counseling, and assessments will be conducted by only one employee from the CONTRACTOR'S staff per individual assignment, and will therefore be subject to no more than one hourly rate per assignment. The following table details the applicable costs and hourly rates:

Pre-Employment Applicants	\$405.00 per applicant
Fitness-for-duty Assessments	\$405.00 per applicant (is the maximum price dependent upon specifics of case.)
Specialty Units Assessments	\$405.00 per applicant (is the maximum price dependent upon specifics of case.)

B. Payments shall be made in accordance with CITY purchasing procedures upon presentation of statements for services rendered and as approved by the City Manager. There shall be no further compensation for services rendered or for expenses incurred in addition to those specified above in the absence of prior written consent of the CITY.

C. CONTRACTOR shall maintain a contemporaneous record of hours billed to the nearest tenth of an hour, indicating in brief summary a description of the work performed. The statements submitted for services rendered under the terms of this agreement will in no case be for more than this record will corroborate. A copy of such record shall be attached to the statement.

IV. CITY OBLIGATIONS AND DUTIES

- A. To furnish all available information and data in the CITY'S possession or control relevant in assisting CONTRACTOR in the performance of its duties under this agreement subject to any confidentiality requirements under federal or state law.
- B. To pay the CONTRACTOR for its services in accordance with the requirements of this agreement within 30 days of approved invoice.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon thirty (30) days written notice because of the CONTRACTOR'S inability to proceed with the work, or because the services of the CONTRACTOR are unsatisfactory; PROVIDED, however, that in any case the CONTRACTOR shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this Contract.
- B. That the right is reserved to the CONTRACTOR to terminate this agreement at any time, upon thirty (30) days written notice because of the CONTRACTOR'S inability to proceed with the work; PROVIDED, however, that in any case the CONTRACTOR shall continue to provide services up to the time of termination on the basis of the provisions of this Contract.
- C. That the services to be performed by the CONTRACTOR under the terms of this Contract are personal and cannot be assigned, subcontracted or transferred without specific consent of the CITY.
- D. In the event of unavoidable delays in the progress of the work contemplated by this Contract, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the CONTRACTOR shall request extensions in writing giving the reasons therefore.
- E. Neither the CITY'S review, approval or acceptance, nor payment for, any of the work or services required to be performed by the CONTRACTOR under this Contract shall be

construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this Contract.

- F. The rights and remedies of the CITY provided for under this Contract are in addition to any other rights and remedies provided by law.
- G. It is specifically agreed between the parties executing this Contract, that it is not intended by any of the provisions of any part of this Contract to create the public or any member thereof, or any City employee, a third-party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for damages pursuant to the terms of this Contract.
- H. It is the intent of the parties that the provisions of this Contract are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, et seq.) or the Kansas Budget Law (K.S.A. 79-2925). Therefore, notwithstanding anything to the contrary herein contained, the CITY'S obligations under this Contract are to be construed in a manner that assures that the CITY is at all times not in violation of the Cash Basis Law or the Budget Law.
- I. This agreement is effective from November 01, 2010, to October 31, 2011, (the yearly anniversary date) with an option to renew under the same terms and conditions for three (3) additional one (1) year periods. The contract shall be deemed to have been renewed for successive one (1) year periods unless either party provides written notice to the other of its intention to terminate the contract, not less than sixty (60) days prior to the yearly anniversary date.
- J. CONTRACTOR shall not be responsible for delays occasioned by the actions or inactions of the CITY, or for unavoidable delays beyond the control of the CONTRACTOR.

IN WITNESS WHEREOF, the CITY and the CONTRACTOR have executed this Contract as of the date first above written.

CITY OF WICHITA, KANSAS

BY _____
Carl Brewer, Mayor

ATTEST:

Karen Sublett
City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law and City Attorney

RIVER PARK PSYCHOLOGY
CONSULTANTS, LLC

BY _____

TITLE: _____

ATTEST:

**REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated hereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard

to race, religion, color, sex, disability and age, except where age is a bona fide occupational qualification, national origin or ancestry. In all solicitations or advertisements for employees, the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer," or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she, or it, reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement, and it may be canceled, terminated or suspended in whole or in part, by the City or its agency; and further Civil Rights complaints or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every sub-contract, sub-purchase order or sub-agreement so that such provisions will be binding upon each sub-contractor, sub-vendor or sub-supplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than

five thousand dollars (\$5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Agenda Item No. XII-11

**City of Wichita
City Council Meeting
October 26, 2010**

To: Mayor and City Council

Subject: Neighborhood Façade Program Contract Approvals

Initiated By: Housing and Community Services Department

Agenda: Consent

Recommendation: Approve the contracts and authorize the necessary signatures.

Background: Wichita is recognized as an “entitlement” city by the U.S. Department of Housing and Urban Development (HUD). This is based on a federal formula which looks at total population, the number of persons below the poverty level, the number of overcrowded housing units, the age of housing, and the population growth lag. Because of the City’s “entitlement” status, Wichita received a direct allocation of Community Development Block Grant (CDBG-R) funds from the American Recovery and Reinvestment Act of 2009 (ARRA).

On May 19, 2009, the Wichita City Council approved the substantial amendment to the Consolidated Plan, which included \$200,000 for a Neighborhood Façade Program. The amendment also included \$487,713 for sidewalks and \$76,713 for program administration. HUD approved the City’s substantial amendment for administration of the CDBG-R funds in June, 2009.

Analysis: City staff received nearly 50 applications seeking funding for projects totaling \$1,200,000. All applicants who met the primary thresholds of being located inside the Neighborhood Reinvestment Area boundary, being current on all taxes, and being in good standing as a business, and who returned a pre-qualification were vetted by the City of Wichita. Business applications that passed vetting were scored and ranked. Twelve businesses were approved for funding. Two agreements exceed \$25,000 and must be approved by City Council and signed by the Mayor.

Financial Consideration: Agreement with Razook’s Furniture - \$34,106. Agreement with Connie’s Mexico Café - \$37,077

Goal Impact: Expenditure of Homelessness Prevention and Rapid Re-Housing Program funds will impact Economic Vitality & Affordable Living and Quality of Life goals.

Legal Consideration: Agreements have been approved by the Law Department.

Recommendation/Actions: It is recommended that the City Council approve the contracts and authorize the necessary signatures.

Attachments: Agreements.

AGREEMENT

between

THE CITY OF WICHITA, KANSAS

and

RAZOOK FURNITURE, INC.

relating to

Neighborhood Façade Improvement

under the

Community Development Block Grant-R (CDBG-R) Program

Housing and Community Services Department
332 N. Riverview
Wichita, Kansas 67203
Phone (316) 462-3722
Fax (316) 462-3719

**PART A
AGREEMENT**

THIS AGREEMENT (hereinafter the "Agreement") entered into this _____ day of September, 2010 by and between the City of Wichita, Kansas (hereinafter the "City") and Robert D. Razook (hereinafter the "Landholder"), owner of Razook Furniture, Inc. located at 1134 E. Douglas, Wichita KS 67214.

WITNESSETH THAT:

WHEREAS, The City of Wichita has entered into a funding Agreement with the United States of America, Department of Housing and Urban Development (hereinafter referred to as HUD) for the execution of projects and activities under Title XII of Division A of the American Recovery and Reinvestment Act of 2009 under the Community Development Block Grant-R (CDBG-R) Program hereinafter referred to as CDBG-R; and

WHEREAS, The City has entered into a contract with the United States of America for the implementation of a program of local assistance for The City of Wichita; and

WHEREAS, the cooperation of the City and the Landholder is essential for the successful implementation of an economic development project under the CDBG-R program;

WHEREAS, the City's Department of Housing and Community Services is authorized to act on behalf of the City in implementing this grant Agreement; and

WHEREAS, On May 19, 2009 the Wichita City Council allocated \$200,000 in CDBG-R funds for the execution of the approved Neighborhood Façade Improvement activity; and

WHEREAS, Landholder's application requesting allocation of CDBG-R funding in the amount of \$34,106.00, for Neighborhood Façade Improvements on the premises in which Landholder has an interest, at 1134 E. Douglas, Wichita, Kansas 67214 has been approved for funding;

NOW, THEREFORE, the parties hereto do mutually agree that this Agreement is entered into predicated upon, and in consideration of, the performance of the following terms and/or conditions to be performed on their respective parts, as indicated below:

1. SCOPE OF WORK

- 1.1 Scope of Work: The Landholder will implement completion of façade improvements on the building located at 1134 E. Douglas, Wichita, KS 67214 and legally described as LOTS 5-7-9 DOUGLAS AVE. LAMB'S SUB., in a satisfactory and proper manner as determined by the City.

Such façade improvements will include:

- a. Tuck point and repair damaged mortar joints on south and east facades
- b. Repair up to 15 windows on 2nd story – south and east facades
- c. Refurbish neon sign on south façade
- d. Replace awning on south facade.

- 1.2 Revision of Scope: The City may revise the approved objectives, accomplishments, and budget items in PARTS B and C when necessary. The Landholder may request a budget revision at any time throughout the duration of this Agreement. However, prior to any purchases under the new budget, the Landholder must obtain the City's written approval of the revision, in the form of a letter, a fax, or an email sent by Wichita Housing & Community Services Department, 332 N. Riverview, Wichita KS 67203.
- 1.3 Projects Involving Construction or Renovation: For all projects requiring building construction or renovation, the construction/renovation must comply with the City building code and all zoning regulations. Additionally, for construction/renovation projects, including façade improvements, a City official will complete a site inspection prior to reimbursement draws to ensure that materials for which a reimbursement is requested are in place on the building. Reimbursements for construction/building materials and façade improvements will only be made once the materials have been installed or applied.

2. COMMENCEMENT AND COMPLETION

- 2.1 Time of Performance: The Landholder's activities for implementation of the façade improvements are to commence as soon as a Notice to Proceed has been issued, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract through a period ending no later than January 31, 2011, unless an extension has been approved by the City on or prior to that date OR unless the Agreement is terminated earlier in accordance with other provisions herein. Following the completion of the façade improvements, this term of this Agreement shall continue for an additional three (3) years thereafter, unless the Agreement is terminated earlier in accordance with other provisions herein.

3. COMPENSATION AND USE OF FUNDS

Regulation for Use of Funds: The use of funds received pursuant to this Agreement shall be in accordance with the requirements of the Housing and Community Development Act of 1974 (as amended), 24 CFR Part 570, American Recovery and Reinvestment Act of 2009, other regulations governing the use of contract funds, and any amendments or policy revisions thereto which shall become effective during the term of this Agreement. *It is the Landholder's responsibility to read, understand, and comply with these regulations.*

- 3.1 Uniform Grant Administrative Requirements and Cost Principles: During the administration of this contract, the Landholder shall comply with, and adhere to:

- a. Office of Management and Budget (OMB) Circular No. A-110, Uniform Administrative Requirements of Grants and Other Agreements with Institution of Higher Education, Hospitals and Other Nonprofit Organizations; and
- b. OMB Circular No. A-122, Cost Principles for Nonprofit Organizations; and
- c. OMB Circular No. A-21, Cost Principles for Colleges and Universities, as applicable.

- 3.2 Total Payments: Total amount of funds provided by the City to the Landholder under this Agreement shall not exceed \$34,106.00 . Draw requests must be received by the City within 15 days following the Landholder's payment to the contractor. At the sole discretion of the City, any funds remaining unexpended as of the termination date of this Agreement may be de-obligated from this Agreement and made available for other eligible projects, as determined appropriate by the City.
- 3.3 Reimbursement Requests: This is a cost-reimbursement Agreement. Disbursement of funds under this Agreement may be requested only for necessary, reasonable, and allowable costs described in PART B, and for which the Landholder has made payment during the period of performance set forth in item Section 2.1 above. The City agrees to reimburse the Landholder for such costs, but solely up to the amount approved for such costs in the project budget, and payment shall be made upon receipt of a detailed invoice accompanied by a progress report from the Landholder specifying the services performed and expenses incurred. Equipment purchases are ineligible expenses. All requests for reimbursement must be accompanied by documentation of payment for eligible expenses (i.e., invoices, receipts, bills from vendors, copies of checks, time sheets, etc.), and other supporting documentation.
- 3.4 Double Reimbursement: The Landholder must not claim reimbursement from the City under this Agreement for any portion of its obligations that has already been or will be reimbursed by another source of revenue.
- 3.5 Restriction on Disbursements: CDBG funds shall not be disbursed to a Landholder or contractor except pursuant to a written contract, which incorporates by reference the general conditions of this Agreement. Disbursements may be suspended or terminated under this Agreement upon refusal to accept any additional conditions that may be imposed by the City at any time or if the entitlement funds to the City under the Federal Act(s) are suspended or terminated.
- 3.6 Withholding Payments: All payments to the Landholder are subject to the Landholder's compliance with this Agreement. A breach of the Agreement is grounds for non-payment until such corrective measures are made which will resolve Agreement non-compliance.
- 3.7 Closeout Reimbursement: Closeout billings are to be submitted within thirty (30) days after termination of the contract. If not submitted, the unexpended funds shall revert to the City.
- 3.8 Program Income: The Landholder agrees to abide by the Program Income Requirements set forth in 24 CFR 570.504(c). Program Income is defined as gross income received by a unit of local government (City) or a contractor of the City (such as Landholder) that was generated from the use of CDBG funds, and will be managed in accordance with HUD regulations governing program income.

The Landholder agrees to remit all Program Income to the City within fifteen (15) days of its receipt, unless a request is made to the City within that same fifteen (15) day period indicating that the Landholder would like to spend those funds on other CDBG-R-eligible façade improvement costs. The Landholder must obtain City and/or HUD approval of such requests, in writing, prior to such a proposed expenditure of Program Income. Should these requests be approved, verification of the expenditure of Program Income must be provided to the City no later than the contract completion date described in Section 2.1 of this Agreement. If the Landholder, after City approval, chooses not to remit Program Income to the City, the Landholder must spend all Program Income on eligible CDBG-R façade improvement activities prior to requesting additional reimbursements from the City.

Program Income that is received by the Landholder before closeout of the grant that generated the income is treated as additional CDBG-R funds and is subject to all federal regulations and policies governing the program. Under limited circumstances, the City may approve the use of CDBG-R Program Income for the purpose of capitalizing a revolving loan fund for specific identified activities. Payments to a revolving loan fund are Program Income and must substantially be disbursed from the revolving loan fund before additional grant funds are drawn from the City for revolving loan fund activities.

Regardless of whether Program Income is remitted to the City or spent on other CDBG-R-eligible costs, documentation of the receipt of Program Income, such as supporting schedules identifying the project and the source of income, must be submitted to the City within fifteen (15) days of its receipt. When Program Income is generated by an activity that is only partially assisted with CDBG-R funds, the Program Income shall be prorated to reflect the percentage of said funds used. Donations to the program covered by this agreement are not considered program income.

At the end of the term of this Agreement, as described in Section 2.1, the City may require remittance of all or part of any Program Income balances (including investments thereof) held by the Landholder (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum draw down, or cash or investments held for Section 108 security needs).

4. USE AND DISPOSITION OF PROPERTY

- 4.1. Once the façade improvements provided for herein have been completed, the Landholder shall not, without the express written consent of the City, signed by an authorized representative of the City, undertake or permit any construction, alteration, remodeling or other action which would materially affect the exterior facade improvements on the premises (including, without limitation the exterior walls, the roofs or chimneys) or which would adversely affect the structural soundness of improvements on the premises (provided, however, that the foregoing shall not prevent maintenance and repairs undertaken in the ordinary course of the Landholder's business, with such repairs/maintenance not requiring the City's consent hereunder.) In the event the City does consent to construction, alteration, remodeling or other action which would affect the exterior facade improvements on the premises, the Landholder agrees that such construction, alteration, remodeling or other action will conform with applicable local and state standards for construction or restoration or rehabilitation of historic property. The Landholder agrees at all times to maintain the premises in good and sound state of repair and to bear the cost of all maintenance and repair of the premises.
- 4.2. The property shall not be divided, diminished or subdivided nor shall the property ever be devised or conveyed except as a unit.
- 4.3. The premises shall only be used for a use consistent with the zoning ordinances of the City of Wichita.
- 4.4. No other structures may be constructed on the property during the term of this Agreement without the express written permission of the City, signed an authorized representative of the City (provided, however, that the foregoing shall not prevent construction relating to (i) replacement of the existing structures on the property due to reasonable wear and tear, casualty or condemnation; and (ii) construction of appurtenances to the premises, so long as the same do not adversely impact the building but do comply with applicable code and the terms of this Agreement).
- 4.5. No utility transmission lines, except those required by the existing structures or by structures permitted by the City, may be placed on or over the property.

- 4.6. No material topographical changes shall be made or allowed on the premises without the express written permission of the City, signed by an authorized representative of the City.
- 4.7. Landholder agrees that representatives of the City, its successors or assigns, shall be permitted at all reasonable times to inspect the premises. Inspections will normally take place on the exterior of the structures on the premises; however, Landholder agrees that representatives of the City, its successors and assigns, shall be permitted to enter and inspect the interior of the premises to insure maintenance of structural soundness. Inspection of the interior of the structures will not take place more often than annually, in the absence of deterioration, and such inspection shall not materially and adversely impact Landholder's business activities in the premises. Inspection of the interior of the structures will be made at a time mutually agreed upon by the Landholder and the City, its successors or assigns, and Landholder will not unreasonably withhold consent in determining a date and time for such inspections.
- 4.8. In the event of a violation of any covenant or restriction herein, the City, its successors and assigns, following no less than thirty (30) days notice to Landholder of the violation, may institute suit to enjoin such violation and to require restoration of the premises in compliance with the covenants or restrictions herein. The City, its successors or assigns, shall also have available all legal and equitable remedies to enforce Landholder's obligations hereunder (following expiration of the thirty (30) day notice and cure period set forth above), and in the event Landholder is found to have violated any of their obligations following expiration of such notice and cure period, Landholder shall reimburse the City, its successors and assigns, for any costs or expenses incurred in connection therewith, including court costs and reasonable attorneys' fees. In addition, Landholder acknowledges that the City has reimbursed or will reimburse up to the grant amount in CDBG-R funds budgeted for this project to defray costs of a portion of Landholder's façade improvements, and Landholder further acknowledges that, in the event of Landholder's violation of any covenant or restriction herein contained for the preservation, maintenance or repair of the façade improvements during the term of this Agreement, the City will not have received the social and economic development benefits expected in connection with its application of CDBG-R funds, and the resulting loss to the City will be difficult to measure. In such event, the Landholder covenants to repay to the City, on demand, as contractual or liquidated damages, the full amount of \$34,106.00, or such lesser amount as shall represent the total amount of budgeted CDBG-R funds theretofore actually paid by the City to reimburse façade improvement costs under this Agreement.
- 4.9. Landholder agrees that these covenants and restrictions will be inserted by it in any subsequent deed or other legal instrument by which it divests itself of either the fee simple title or its possessory interest in the premises, or any part thereof during the term of this Agreement. Landholder agrees to give the City written notice of any sale or mortgage of the premises or any part thereof within a reasonable time after such sale or mortgage.
- 4.10. Landholder agrees to maintain the facade of the premises in materially its original condition and configuration or in a condition or configuration which is agreed to by the City.
- 4.11. Nothing herein contained shall impose any obligation or liability on the City for the restoration, renovation, preservation or maintenance of the facade of the premises or any part of the premises. Excepting any damage/expenses/claims due to the City's gross negligence or willful misconduct, the Landholder shall indemnify and hold harmless the City from any liability for any and all claims, demands, damages, judgments, costs or expenses in connection with the restoration, renovation, preservation and maintenance of the facades of the premises or any part thereof or in connection with the failure to restore, renovate, preserve or maintain the facades of the premise or any part of the premises.
- 4.12. The Landholder shall maintain insurance on the premises in such amount and on such terms as will allow the City to restore, repair or rebuild the facade of the premises in the event the facade is damaged or destroyed. In

the event of damage to or destruction of the facades of the premises, the Landholder alone may determine that the facade of the premises cannot be reasonably restored, repaired or reconstructed. In such event, the City shall be entitled to receive from the Landholder an amount equal to the full amount of CDBG-R funds theretofore paid by the City to reimburse façade improvement costs under this Agreement. However, any payment to the City under the terms of this paragraph shall not terminate the restrictions, insurance and maintenance obligations of the Landholder herein unless the façade is fully destroyed beyond reasonable ability to repair (as determined by Landholder in its reasonable discretion), and the terms of this Agreement which are still applicable to the premises shall remain in full force and effect. The provisions of this paragraph shall apply whether or not the Landholder maintains the insurance coverage required by this paragraph. In the event the City receives any payment under the terms of this paragraph, the City shall use such payment in a manner consistent with the purpose of this Agreement and the CDBG-R program.

- 4.13. Landholder acknowledges that the rights granted to the City herein give rise to a property right, vested immediately, with fair market value that is a minimum ascertainable portion of the fair market value of the premises. Thus, if a subsequent unexpected change in the conditions surrounding the premises makes it impossible or impracticable to preserve the premises for the purposes for which the façade improvements were approved and restrictions imposed by this Agreement are terminated by judicial proceedings, the City, on a subsequent sale, exchange or involuntary conversion of the premises, will be entitled to a portion of the proceeds equal to the full amount of CDBG-R funds theretofore expended by the City to reimburse façade improvement costs under this Agreement, unless state law determines that the Landholder is entitled to full proceeds from the conversion without regard to the terms of the prior restrictions imposed by this Agreement. In the event the City receives such proceeds from the subsequent sale, exchange or involuntary conversion of the premises, the City shall use such proceeds in a manner consistent with the purposes of this Agreement and the CDBG-R program.

5. ASSIGNMENTS

- 5.1 Assignability: Neither the City nor the Landholder shall assign, sublet, or transfer their interest in this Agreement without the prior written consent of the other.
- 5.2 Subcontracting/Third Party Contracts: The very nature of certain project activities requires subcontracting. Third parties may be procured for a variety of services, including but not limited to demolition, construction, and renovation; legal services; and engineering services. The Landholder agrees to furnish the City with a copy of each third party contract that it executes in the performance of the work to be undertaken within the scope of this Agreement. Furthermore, the Landholder must incorporate in any and all such contracts being paid or reimbursed with CDBG-R funding provisions which will obligate each of its subcontractors or partners to comply with all federal laws and regulations applicable to this program. Any third party contract that is not in accordance with the outlined budget in this Agreement shall be subject to the advance, written approval of the City. Furthermore, the City shall not be obligated or liable hereunder to any party other than the Landholder.

6. AUDITS AND INSPECTIONS

- 6.1 Audits and Inspections: The Landholder must establish an adequate accounting system on a current basis in accordance with generally accepted accounting principles and standards and in accordance with any specific requirements of the Controller of the City of Wichita. Landholder personnel will make available to The City staff and any other auditor authorized by the City, all accounting records needed to conduct an evaluation of the accounting system and accounting records. If any portion of the funds approved by this contract is subcontracted to other organizations for the delivery of objectives and criteria, the Landholder will ensure that the fiscal and performance records of the subcontractor will be available for inspection by Controller Office personnel or duly authorized auditors, by including appropriate clauses in all of its subcontracts.

7. LANDHOLDER RESPONSIBILITIES

- 7.1 Compliance with Laws: All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments. Further, the Landholder agrees to perform services pursuant to the provisions of this contract and Federal and City regulations, rules and policies and special assurances included therein.
- 7.2 Non-Municipal Personnel and Services: Any services outside the budget line or the Scope of Services which the Landholder deems necessary to assign to a subcontractor, must first have written approval from the City unless otherwise specified.

8. DOCUMENTATION AND RECORD KEEPING

- 8.1 Establishment and Maintenance of Records: The Landholder shall establish and maintain records as prescribed by HUD and/or the City, with respect to all matters covered by this contract.
- 8.2 City Record Requirements: The City is required to maintain records such as those listed below and the Landholder is expected to provide related documentation upon request by the City. Such records shall include but are not limited to:
- a. Records providing a full description of each activity undertaken;
 - b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
 - c. Records required to determine the eligibility of activities;
 - d. Records which demonstrate compliance with the requirements in 24 CFR 570.505 regarding any change of use of real property acquired or improved with CDBG assistance;
 - e. Records that demonstrate compliance with citizen participation requirements;
 - f. Records which demonstrate compliance with requirements in 24 CFR 570.606 regarding acquisition, displacement, relocation, and replacement housing;
 - g. Records documenting compliance with all Federal Fair Housing and Equal Opportunity regulations in the use of CDBG funds;
 - h. Financial records that document all transactions and that can be properly documented and audited, as required by 24 CFR 570.502;
 - i. Copies of completed applications for façade improvement received to date;
 - j. Percentage of property value improvement;
 - k. Agreements and other records related to lump sum disbursements to private financial institutions for financing rehabilitation as prescribed in 24 CFR 570.513;
 - l. Other records necessary to document compliance with Subpart K of 24 CFR 570;
 - m. Copies of all bid documents, bids received, RFPs, RFQs, and any other procurement documents;
 - n. Copies of all third party or subcontracts; and
 - o. Copy of all Davis-Bacon Act related documents;
 - p. Number of jobs created and number of jobs retained;
 - q. Detailed records on Landholder's organization, financial and administrative systems, and the specific CDBG-funded project(s) or activities.
- 8.3 Retention: The Landholder shall retain all records of all project expenses, activities, correspondence, records pertinent to any and all expenditures incurred under this Agreement, and any other information as requested by the City or by HUD for a period of five (5) years after the termination of all activities funded under this Agreement, or after the resolution of all Federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Agreement shall be retained for five years after final disposition of such property. If any litigation, claim, negotiation, or other action involving the records has been started before the expiration of the five year period, the records must be retained until completion of the action

and resolution of issues which arise from it, or until the end of the five year period, whichever is later. All files and records will be made available during normal business hours and other reasonable times for review by the City or by HUD.

- 8.4 Documentation of Costs: All costs shall be supported by proper documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.
- 8.5 Property and Affordability Retention: The Landholder agrees not to sell the property listed in this Agreement for a period of three years (3) following the completion of the project, and if the Landholder is not the owner of the building, Landholder will obtain (and furnish the City a copy of) the building owner's written agreement not to sell the property listed in this Agreement for a period of three years following the completion of the project, and not to raise the Landholder's rent for the same period of time.
- 8.6 Access to Records: The Landholder agrees that the City, HUD, or any authorized representative has access to and the right to examine all records, books, papers, or documents related to the project. The City reserves the right, on demand and without notice, to review all of the Landholder's files associated with this Agreement where payments are based on a record of time, salaries, materials, or actual expenses. The same right to review will be imposed upon any third party or subcontractor of the Landholder; therefore, it is the Landholder's responsibility to ensure that any contract entered into with a third party or subcontractor contains all necessary clauses and language required by the City and/or HUD to ensure compliance with this Agreement and with all local, State, and Federal regulations.

9. PROGRAM EVALUATION

- 9.1 Performance Measures:
Anticipated outcomes are improved curb appeal, increased in sales volume, energy savings from façade improvements if new windows and doors are installed, and increased property value.
- 9.2 Reporting: Record Requirements: the City is required to report to HUD on a quarterly and annual basis on all program activity from the Agreement with the Landholder through three (3) years past completion of the project. The Landholder is expected to provide information such as that listed below upon request by the City.
- a. description of all project activities that have taken place during the reporting period, including:
 - i. Photographs and newspaper/media clippings;
 - ii. Energy consumption
 - iii. Sales volume

10. PROJECT MONITORING

- 10.1 General: City staff will evaluate progress based on the objectives, criteria, work schedule and budget in PART B, to determine if it is consistent with the initial purpose of the project, the City's strategies, comprehensive and neighborhood plans, and if it has a positive impact on the City and its neighborhoods. All data necessary to review and monitor program progress as determined by the City will be made available to City personnel by the Landholder. This includes, but is not limited to, performance records and interviews with the Landholder staff and program participants, as required by the City. City personnel will also make field inspections at the office/job site(s) during construction and not more than annually for three (3) years following construction.
- 10.2 Other Funding: If the attached Budget Detail, PART C, shows that funding for this program is to be provided from other sources, the receipt and expenditure of such funds must be adhered to as specified and is subject

to review. All accounting records necessary to complete a review of other funding sources must be made available to the City upon request. Any change in the attached budget that affects funding from sources other than the City must have prior written authorization from the City.

11. TERMINATION, SANCTIONS AND CLOSEOUTS

- 11.1 Termination: In the event that the Landholder fails to comply with any term of this Agreement, the City may suspend or terminate this Agreement, in whole or in part, or take other remedial action in accordance with 24 CFR 85.43. The City may also terminate this Agreement for convenience in accordance with 24 CFR 85.44.

Funding to be made available by the City under this Agreement has been approved by the U.S. Congress. In the event that sufficient funds are not appropriated, at the sole discretion of the City, this Agreement may be terminated in whole or in part.

Under the conditions described above, the Landholder may be required to refund all funds awarded during the period of this Agreement that have already been spent by the Landholder and reimbursed by the City.

Should the City desire to terminate this Agreement for noncompliance, it shall first give written notice of the reason for proposed termination. The notice shall set forth the following:

- a. Reasonable description of the default/reason for termination;
- b. Demand for a cure; and
- c. Statement of reasonable time within which a cure must be affected. Such reasonable time will be presumed to be not less than five (5), nor more than fifteen (15), business days. Such times shall be measured from the actual receipt of said notice.

- 11.2 Imposition of Sanctions: The City reserves the right to impose sanctions on the Landholder for the violation of any of the terms of this Agreement, failure to comply with any terms in this Agreement, or failure to undertake the project in a timely manner. If the City elects to impose sanctions they may include, but are not necessarily limited to, withholding any and all project funds, termination of the Agreement, requiring the Landholder to return funds already received, or barring the Landholder from future funding.

- 11.3 Closeout: The Landholder's obligation to the City shall not end until all closeout requirements are completed. Activities during the close-out period shall include, but are not limited to, submitting the final reimbursement request and final activity/progress report to the City, disposing of program assets (program income balances, and receivable accounts to the City), and determining the custodianship of records. Grant closeout is not considered final until the City is fully satisfied that project objectives have been met, at which point the City will issue a close-out/grant finalization letter to the Landholder.

- 11.4 Property of the City: Any data or material furnished by the City to the Landholder shall remain the property of the City, and when said data or material is no longer needed by the Landholder for the performance of this Agreement, it shall be returned to the City.

12. TAXES

- 12.1 Payment of Taxes: The City shall not be liable for the payment of any taxes levied by the City, State, or Federal Governments against the Landholder, and all such taxes shall be paid by Landholder; however, should the City nevertheless pay any such taxes, the Landholder shall immediately reimburse the City.

13. LAWS, REGULATIONS AND SPECIAL CONDITIONS

The information in this Article is included for the convenience of the Landholder and to inform the Landholder of the diverse statutory and regulatory requirements to which the acceptance of funds makes them subject.

For the actual regulatory or statutory requirements, the Landholder should consult the actual laws, regulations, and documents referenced in this Article. In addition to the other requirements set forth herein, the Landholder shall likewise comply with the applicable provisions of Subpart K of 24 CFR 570, in accordance with the type of project assisted. All of the referenced regulations are available online, and upon request, the City may provide these materials to the Landholder.

- 13.1 Labor Standards: The Landholder and all subcontractors engaged in contracts in excess of \$2,000 for the construction, completion, rehabilitation, or repair of any building or work financed in whole or in part with assistance provided under this Agreement are subject to the Federal labor standards provisions which govern the payment of wages and the ratio of apprentices and trainees to journey workers. Under the terms of the Davis-Bacon Act, as amended, the Landholder is required to pay all laborers and mechanics employed on construction work wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor, and shall pay overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act (40 USC 327-332). The Landholder shall comply with all regulations issued pursuant to these Acts and with other applicable Federal laws and regulations pertaining to labor standards, including the Copeland "Anti-Kickback" Act. Provided, that if wage rates higher than those required under the regulations are imposed by state or local laws, nothing thereunder is intended to relieve the Landholder of its obligation, if any, to require payment of the higher rates.
- 13.2 Anti-Kickback Rules: Salaries of architects, draftsmen, technical engineers, and technicians performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Anti-Kickback Act of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 103; title 18 U.S.C., section 874; and Title 40 U.S.C., section 276c). The Landholder shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all third party contracts or subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations. Furthermore, the Landholder shall be responsible for the submission of affidavits required of subcontractors thereunder, except as the Secretary of Labor may specifically provide for variations of or exceptions from the requirements thereof.
- 13.3 Debarment and Suspension: In accordance with 24 CFR 24, the Landholder shall not employ or otherwise engage any debarred, suspended, or ineligible contractors or subcontractors to conduct any activities under this Agreement. The Landholder will consult appropriate references, including but not limited to the Excluded Parties Listing Service website at www.epls.gov, to ascertain the status of any third parties prior to engaging their services. The Landholder will submit to the City the names of contractors and subcontractors selected under this Agreement, including a certification by the Landholder that it has determined that none of these entities are presently debarred, suspended, or ineligible.
- 13.4 Emerging Business Enterprises: If a Landholder solicits or requests an invitation for bids, every effort feasible shall be made to contact emerging, minority-owned, and women-owned business enterprises for a response to the solicitation or invitation for bidders. If utilizing a minority subcontractor, the Landholder shall summarize what portion of the project the minority subcontractor handled. At the end of the project, the Landholder shall submit a summary of all payments made to the minority subcontractor(s). The Landholder shall submit all necessary forms with quarterly reports to assure compliance with this requirement.
- 13.5 Section 3 - Employment Opportunities for Area Residents: The Landholder and any authorized subcontractor shall be subject to all applicable provisions of the Housing and Community Development Act of 1974 (42 U.S.C. 5301), as amended, including but not limited to Executive Order 11246 and Section 3 of the Housing and Community Development Act of 1974, "Employment Opportunities for Business and Lower Income Persons in

connection with Assisted Projects" (HUD 24 CFR 135). These require that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area, and contracts for work in connection with the project be awarded to businesses that are located in, or owned in substantial part by, persons residing in the area of the project. In all solicitations for bids, the contractor must, before signing the Contract, provide a preliminary statement of the work force needs and plans for possible training and employment of lower income persons. When Landholder utilizes the bidding procedure to obtain bids, the invitation or solicitation for bids shall advise prospective contractors of the requirements of Section 3 and the clause (Attachment A) shall be inserted as a component part of any contract or subcontract.

- 13.6 Building and Zoning Regulations and Permits: The Landholder agrees to comply with all laws of The City of Wichita and the State of Kansas. In particular, the Landholder shall comply with all applicable building and zoning regulations. In addition, the Landholder shall obtain all necessary permits for intended improvements or building activities.
- 13.7 Environmental Review: In accordance with 24 CFR 570.604, the activities under this Agreement are subject to environmental review requirements. Such requirements may include, but are not necessarily limited to, activities related to historic districts and/or properties, floodplain management and wetland protection, noise, wild and scenic rivers, air quality, farmlands protection, environmental justice, airports, site contamination, and hazardous facilities. There shall not be any costs incurred or obligation of funds until such time as an Environmental Review (ER) is completed for each project (generally one per project). The ER shall be completed by the City. The Landholder also agrees to comply with the following regulations insofar as they apply to the use of CDBG funds:
- a. Clean Air Act, 42 U.S.C., 1857, et seq.;
 - b. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under;
 - c. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR 50, as amended;
 - d. National Environmental Policy Act of 1969; and
 - e. HUD Environmental Review Procedures (24 CFR 58).
- Landholder should note that completion of the ER is the City's responsibility. Nothing in this section or in any other part of this Agreement should be construed as relieving the City of this responsibility or placing this responsibility on the Landholder.
- 13.8 Flood Disaster Protection: This Contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (PL 93-234). Use of any assistance provided under this Agreement for acquisition or construction in an area identified as having special flood hazards shall be subject to the mandatory purchase of flood insurance in accordance with the requirements of Section 102(a) of said Act.
- 13.9 Property Standards and Lead-Based Paint: All housing assisted shall meet the Statewide Building Code, the International Building Code, and the lead-based paint requirements in 24 CFR 570.608. In accordance with regulations, the Landholder shall adhere to lead-based paint notification and abatement practices, as applicable, and in no case shall use lead-based paint in the construction or rehabilitation of the properties assisted under this Agreement.
- 13.10 Section 106 - Historic Preservation Requirements: The Landholder agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and the procedures set forth in 36 CFR 800 insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the Kansas State Historic Preservation Officer for all acquisition, rehabilitation, and demolition of properties that are fifty years old or older, are located in or adjacent to a historic

district, or that are included on a Federal, State, or local historic property list, or that have been determined eligible for inclusion on such a list. The Landholder shall notify City staff immediately upon determining that a property may fall into this category.

- 13.11 Section 504 - Persons with Disabilities: The Landholder, in the implementation of projects funded by this Agreement and in all of its other operations, will comply with all requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794) (and the implementing regulations at 24 CFR 8), the Americans with Disabilities Act of 1990 (PL 101-336), and all state and local laws requiring physical and program accessibility to people with disabilities, and agrees to defend, hold harmless, and indemnify the City from and against any and all liability for any noncompliance on the part of the Landholder.
- 13.12 Discrimination Prohibited: No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Landholder receiving funds pursuant to this contract.
- The Landholder further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreements" as provided in Attachment B.
- 13.13 Fair Housing: The Landholder will comply with Title VIII of the Civil Rights Act of 1968 (PL 90-284, 42 U.S.C. 3601-20), as amended and will administer all funded projects related to housing and community development in a manner to affirmatively further fair housing. In all advertising of residential real estate for rent, sale or financing, the Landholder will ensure that the Equal Housing Opportunity logotype, statement or slogan is included as a means of educating the home seeking public that the property is available to all persons regardless of race, color, religion, sex, disability, familial status, or national origin. In all other advertising for goods or services, the Landholder will ensure that a statement is included in all formal, written advertisements regarding the Landholder being an Equal Opportunity Agency.
- 13.14 Nepotism: No person shall be employed or contracted with to make the façade improvements if a member of his or her immediate family is on the Board of Directors of the Landholder or is employed in an administrative capacity by the Landholder. For the purposes of this section, "immediate family" includes: wife, husband, daughter, son, mother, father, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, aunt, uncle, niece, nephew, stepparent and stepchild; "administrative capacity" includes those who have selection, hiring, supervisory or operational responsibility for the program.
- 13.15 Conflict of Interest: The Landholder hereby severally warrants that it will establish and adopt safeguards to prohibit members, officers, and employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Further, In accordance with 24 CFR 570.611, no member, officer, or employee of the Landholder who exercises any functions or responsibility with respect to the program during his or her tenure, or for one year thereafter, shall have any financial interest or benefit, direct or indirect, in any contract or subcontract, or the proceeds thereof, either for themselves or those with whom they have family or business ties, for work to be performed in connection with the program assisted under this Agreement.
- 13.16 Political Activity Prohibited:
- a. None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for partisan political activity.

- b. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

13.17 Lobbying Prohibited: None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas. The Landholder shall assure compliance with the regulations at 24 CFR Part 87 by submitting, and requiring all applicable subcontractors to submit, a certification of compliance with this provision.

The Landholder certifies to the best of its knowledge and belief that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Landholder to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the Federal contract, grant, loan, or cooperative agreement, the Landholder will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction.

13.18 Religious Organizations: 24 CFR Part 570 has been amended by the federal government to allow religious organizations to participate in projects funded with Federal resources. Landholder shall follow federal regulations, as amended.

14. MISCELLANEOUS CLAUSES AND NOTICES

14.1 Dissemination of Information: The Landholder, at such times and in such forms as HUD and/or the City may require, shall furnish to HUD and/or the City, such statements, records, reports, data and information as HUD and/or the City may request pertaining to matters covered by this contract. All reports, information, data and other related materials, prepared or assembled by the Landholder under this contract, are confidential and shall not be made available to anyone other than an appropriate agency of the United States government without the prior written approval of the City or as set forth in K.S.A. 45-201 et. seq.

14.2 Identification of Documents and Projects: All projects, reports, maps, news releases and/or other documents undertaken as part of this contract, other than documents exclusively for internal use with the City staff, shall contain the following posted information at the project site or the front cover or title page of any reports or documents, or in the case of maps, in an appropriate block: "The City of Wichita", then name of the Landholder, and, in the case of written material, the month and year of preparation and the following information regarding Federal assistance: "The (preparation/funding) of this project, report, map, document, etc., was financed (in whole or in part) through a grant from the U.S. Department of Housing and Urban Development and the City of Wichita under the provision of Title XII of Division A of the American Recovery and Reinvestment Act of 2009 under the Community Development Block Grant (CDBG-R)."

14.5 Copyrights: If this contract results in a book or other material that may be copyrighted, the author is free to copyright the work, subject to HUD regulations. HUD and the City reserve a royalty-free, non-exclusive and

irrevocable license to reproduce, publish or otherwise use and to authorize others to use all copyrighted material and all material that can be copyrighted.

- 14.6 Patents: Any discovery or invention arising out of or developed in the course of work aided by this contract shall promptly and fully be reported to HUD and the City for determination by HUD and the City as to whether patent protection on such invention or patent discovery shall be sought and how the rights in the invention or discovery, including rights under the patent issued thereon, shall be disposed of and administered, in order to protect the public interest. All such determinations are subject to HUD regulations.
- 14.7 Anti-Trust Litigation: For good cause, and as consideration for executing this contract, the Landholder, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all rights, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Landholder pursuant to this contract.

15. APPENDICES

All attachments referenced in this Agreement, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Attachment A – Section 3 Clause

Attachment B – Revised Non-Discrimination and Equal Employment Opportunity Statement for
Contracts or Agreements

Part A – Agreement

Part B – Performance Criteria/Objectives

Part C – Budget Detail

Part D – Performance Reports

Part E – Request for Reimbursement/Cost Control Statement

16. AUTHORIZATION TO ENTER INTO CONTRACT

The undersigned person signing as an officer on behalf of the Landholder, a party to this Agreement, hereby severally warrants and represents that said person has authority to enter into this Agreement on behalf of said Landholder and to bind the Landholder to this Agreement, and further that said Landholder has authority to enter into this Agreement and that there are no restrictions or prohibitions contained in any article of incorporation or bylaw against entering into this Agreement.

LANDHOLDER

Robert D. Razook
President

Date

Acknowledgement

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Robert D. Razook, (title) President who is personally known to me to be the same person who executed the foregoing instrument of writing on behalf of Razook Furniture, Inc., and duly acknowledged the execution of the same as the act and deed of such company .

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Notary Public
My Appointment Expires:

BUILDING OWNER [IF DIFFERENT]

Click here to enter text.
Click here to enter text.

Date

Acknowledgement

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, (title)

_____ who is personally known to me to be the same person who executed the foregoing instrument of writing on behalf of _____, and duly acknowledged the execution of the same as the act and deed of such company .

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Notary Public
My Appointment Expires:

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

ATTEST:

Karen Sublett
City Clerk

Acknowledgement

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 2010____, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Carl Brewer, Mayor of the City of Wichita, Kansas and Karen Sublett, City Clerk of such city, who are personally known to me to be the same persons who executed the foregoing instrument of writing, and duly acknowledged the execution of the same on behalf of, and as the act and deed of said city.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Notary Public
My Appointment Expires:

Approved as to Form:

Gary E. Rebenstorf
Director of Law

Part B
PERFORMANCE CRITERIA AND OBJECTIVES

ACTIVITY NAME: NEIGHBORHOOD FAÇADE IMPROVEMENT

LANDHOLDER INFORMATION

NAME: Razook Furniture, Inc.

CONTACT PERSON(S): Bob Razook

ADDRESS: 1134 E. Douglas, Wichita KS 67214

PHONE: (316) 265-3355

FAX: (316) 267-8771

EMAIL: 90min@razooks.kscoxmail.com

CONTRACT PERIOD: September __, 2010 through January 31, 2010

FUNDING SOURCE(S): ☒ CDBG

HUD OUTCOME PERFORMANCE MEASUREMENTS

NATIONAL OBJECTIVE(S): ☒ Low/Mod Benefit ☐ Slum/Blight ☐ Urgent Need

OBJECTIVE CATEGORY: ☐ Sustainable Living Environment ☐ Decent Housing
☒ Creating Economic Opportunities

OUTCOME CATEGORY: ☐ Availability/Accessibility ☐ Affordability
☒ Sustainability

The Landholder agrees:

1. It is the principal administrative and coordinating agency for this project, contracting and/or subcontracting outside services, as may be necessary, subject to compliance with all applicable local, state and federal laws; and
2. It is the responsible authority without recourse to the City regarding the settlement and satisfaction of all contractual and administrative issues arising out of the contract entered into; and
3. It will maintain, during the term of this agreement, a filing with the Secretary of the State of Kansas as a for profit corporation by the Internal Revenue Service. Evidence of such status will be provided to the City upon request.

Project Eligibility:

According to 24CFR570.209(b)(i)(v)(M) this project qualifies for meeting the CDBG National Objective for Low/Mod Area Benefit.

Additionally, this project is intended to increase curb appeal of the business receiving the grant, increase its property value, show an increase in annual sales volume, and increase energy efficiency if windows and/or doors are replaced.

1. The Business must be located inside the City limits of Wichita.
2. Ensure that the participating business qualifies as a Section 3 Business Concern in at least one of the following ways (a) at least 51% or more owned by Section 3 residents; or (b) employs Section 3 residents as at least 30% of its full time permanent staff; or (c) provides evidence of a commitment to subcontract to Section 3 Business Concerns, at least 25% of the contract amount.

HUD FY 2010 INCOME LIMITS

City of Wichita, Kansas

FAMILY SIZE	EXTREMELY LOW 30% OF MEDIAN	VERY LOW INCOME 50% OF MEDIAN	LOW INCOME 80% OF MEDIAN
1	\$13,400	\$22,300	\$35,700
2	\$15,300	\$25,500	\$40,800
3	\$17,200	\$28,300	\$45,900
4	\$19,100	\$31,850	\$50,950
5	\$20,650	\$34,400	\$55,050
6	\$22,200	\$36,950	\$59,150
7	\$23,700	\$39,500	\$63,200
8	\$25,250	\$42,050	\$67,300

Project Description: This program will address needed façade improvements on the building located at 1134 E. Douglas. Façade improvements are expected to make the building and business more appealing to the public and clientele and the business will have an increase in sales and hire low to moderate income persons.

Project Content: The Landholder shall complete the following objective(s) in a manner acceptable to the City, in accordance with the schedule, budget and conditions detailed herein. The City reserves the right to revise or otherwise alter established objective(s) and criteria during the grant period in an effort to allow for meaningful project measurement and evaluation which will directly impact future funding recommendations.

Goal: Increase viability of participating neighborhood businesses

- Objectives:**
1. Increase the business' curb appeal
 2. Increase the business' annual sales volume
 3. Increase the business' appraised property value
 4. Decrease energy consumption and costs

Outcome Measures:

- Sales volume recorded annually and compared to previous years dating back one year prior to project start.
- Compare appraised property value with previous year data.
- Compare energy costs one year prior to project start and measure annually for three years.

Project Administration: Housing and Community Services Department

Procurement Methods: The Landholder shall use its own procurement practices which comply with applicable state and local laws, rules and regulations so long as those practices do not unduly limit bidding competition. Additionally, procurement made with federal grant funds shall adhere to the standards set forth in OMB Circular A-110, including:

1. Maintaining a code or standard of conduct governing the performance of the Landholder's officers, employees or agents engaged in awarding and administering contracts supported with Federal funds.
2. Advertising of procurement transactions as appropriate without regard to a dollar value in a manner allowing maximum free and open competition. No sole source procurement (obtaining only one bid) is permitted without prior approval for all purchases except small purchase procedures defined in A-110.
3. Invitations for bids shall be based on specifications developed by the Landholder and approved by City of Wichita. Said specifications shall be detailed to the extent necessary to solicit comparable bids without unduly limiting competitive bidding.
4. Bids will be awarded on the basis of the lowest and best bid, price and other factors considered.
5. The Landholder agrees to purchase services, goods and materials on an "as needed basis" and at the "lowest price obtainable".
6. The Landholder will maintain procurement files outlining procurement efforts for each bid, including names and addresses of bidders solicited, information pertaining to advertising, and solicitation of Small and Emerging Business Enterprise participation. Information will be maintained of bid tabulations, justification of bid award, letters of notification to bidders regarding bid award, and any other pertinent information.

Funding: It is mutually agreed by and between the City and the Landholder that for reimbursement of eligible and necessary expenses up to \$34,106, the Landholder will pay for street side façade improvements. Said funds will be used as set forth in the sections entitled Budget and Method of Payment. Any costs in excess of \$34,106 are the responsibility of the Landholder.

Budget: The City shall pay the Landholder as hereinafter set out; the maximum of \$34,106 for the activity described in this Agreement. Funding under this Agreement shall be originally budgeted as detailed in PART C. Adjustments to budget line items and categories may be made with agreement by both parties to this Agreement.

Method of Payment: The Landholder agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and CDBG program.

1. The City and the Landholder also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract.
2. The Landholder will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditure made under this Agreement will be retained in the Landholder's files for five (5) years after the final audit of expenditures made under this contract.
3. Reimbursement: The City agrees to fund cost of labor and materials used to make façade improvements. Reimbursement for items shown in Part C will be granted upon submission of an accurate Contractor's Invoice and supporting documentation including but not limited to timesheets, invoices, receipts, and Davis-Bacon Certified Payroll Reports and other documentation showing Landholder has already paid the contractor in part or in full.

Performance Reports, Financial and Client Files: The Landholder shall establish and maintain accounting and project records specifically for the federal funds awarded. Original documentation supporting all reimbursed expenditures and other project records will be retained by the Landholder for five (5) years after the final audit of expenditures made under this Agreement.

Records must be maintained documenting receipts of CDBG program income and expenditures of the same. Goods and services received as program income in lieu of cash must require valuation as an in-kind item with appropriate records maintenance and reporting in the same manner as other program income. Any CDBG attributable income generated by this program shall be retained to offset project costs. Donations to the project covered by this agreement are not considered program income.

Additionally, a narrative or other description of progress may be required.

Project Evaluation: The City will evaluate this project based on the objective(s) stated in Part B. Failure by the Landholder to provide the level of service stated herein may result in a determination by the City to modify the level of payment to the Landholder on a pro rata basis with level of service. Landholder records are subject to review by the City to ensure the accuracy and validity of information reported in monthly progress reports.

BUDGET DETAIL

FUNDING SOURCE	DEPT./DIVISION	PROJECT/ACTIVITY	GRANT/DETAIL/OCA
American Recovery & Reinvestment Act (CDBG-R)	Housing & Community Services	Neighborhood Façade Program	980901/010200/980905

Account Classification			Budget
PERSONAL SERVICES			
01	1195	Delegate Agencies – Payroll	
	1495	Delegate Agencies – Employee Benefits	
	1595	Delegate Agencies – Payroll Taxes	

TOTAL PERSONAL SERVICES**CONTRACTUAL SERVICES**

02	2195	Delegate Agencies – Utilities	
	2295	Delegate Agencies – Telephone	
	2296	Delegate Agencies – Postage & Shipping	
	2395	Delegate Agencies – Travel	
	2396	Delegate Agencies – Conferences	
	2495	Delegate Agencies – Insurance	
	2505	Delegate Agencies – Contractors	\$34,106.00
	2703	Maintenance – Equipment	
	2795	Delegate Agencies – Equipment Rent	
	2895	Delegate Agencies – Building Maintenance	
	2902	Advertising	
	2906	Membership Dues	
	2917	Printing and Photocopying	
	2996	Delegate Agencies – Other Contractuals	
	2997	Delegate Agencies – Administrative Charges	

TOTAL CONTRACTUAL SERVICES**COMMODITIES**

03	3195	Delegate Agencies – Supplies	
	3196	Delegate Agencies – Supplies Food	
	3995	Delegate Agencies – Miscellaneous Commodities	

TOTAL COMMODITIES**CAPITAL OUTLAY**

TOTAL CAPITAL OUTLAY	0
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GRAND TOTAL

PART D
PERFORMANCE REPORTS

1. Improve curb appeal – before and after photos
2. Business volume

SECTION 3 CLAUSE

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

H. Section 3 Goals. The City of Wichita in accordance with 24 CFR Part 135, has established goals for CDBG assisted projects. All Section 3 covered contracts shall include the Section 3 clause as shown above. Consistent with existing Federal, State and local laws and regulations, the City of Wichita has set the following goals to comply with the Section 3 requirements:

- Committing to employ Section 3 residents at a rate of 30% of the aggregate of new hires for housing and community development assisted projects
- Committing to contract a minimum of 10% of the total dollar amount of all other Section 3 covered contracts, such as community development infrastructure improvements or professional services.

Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of CDBG funds for the following activities:

- Housing construction
- Housing rehabilitation
- Other public construction

**REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Nondiscrimination – Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
 - 1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including

apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Nondiscrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier;
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency.

D. Exempted from these requirements are:

3. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
4. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

AGREEMENT
between
THE CITY OF WICHITA, KANSAS
and
CONNIE'S MEXICO CAFE
relating to
Neighborhood Façade Improvement
under the
Community Development Block Grant-R (CDBG-R) Program

Housing and Community Services Department
332 N. Riverview
Wichita, Kansas 67203
Phone (316) 462-3722
Fax (316) 462-3719

PART A
AGREEMENT

THIS AGREEMENT (hereinafter the "Agreement") entered into this _____ day of September, 2010 by and between the City of Wichita, Kansas (hereinafter the "City") and Carmen Rosales (hereinafter the "Landholder"), owner of Connie's Mexico Cafe located at 2227 N. Broadway, Wichita KS 67219.

WITNESSETH THAT:

WHEREAS, The City of Wichita has entered into a funding Agreement with the United States of America, Department of Housing and Urban Development (hereinafter referred to as HUD) for the execution of projects and activities under Title XII of Division A of the American Recovery and Reinvestment Act of 2009 under the Community Development Block Grant-R (CDBG-R) Program hereinafter referred to as CDBG-R; and

WHEREAS, The City has entered into a contract with the United States of America for the implementation of a program of local assistance for The City of Wichita; and

WHEREAS, the cooperation of the City and the Landholder is essential for the successful implementation of an economic development project under the CDBG-R program;

WHEREAS, the City's Department of Housing and Community Services is authorized to act on behalf of the City in implementing this grant Agreement; and

WHEREAS, On May 19, 2009 the Wichita City Council allocated \$200,000 in CDBG-R funds for the execution of the approved Neighborhood Façade Improvement activity; and

WHEREAS, Landholder's application requesting allocation of CDBG-R funding in the amount of \$37,077.00, for Neighborhood Façade Improvements on the premises in which Landholder has an interest, at 2227 N. Broadway, Wichita KS 67219 has been approved for funding;

NOW, THEREFORE, the parties hereto do mutually agree that this Agreement is entered into predicated upon, and in consideration of, the performance of the following terms and/or conditions to be performed on their respective parts, as indicated below:

1. SCOPE OF WORK

- 1.1 Scope of Work: The Landholder will implement completion of façade improvements on the building located at 2227 N. Broadway, Wichita KS 67219 and legally described as Lots 19-21 except street, Block 1 Highland Addition, in a satisfactory and proper manner as determined by the City.

Such façade improvements will include:

- a. Remove two windows on second level
- b. Frame the opening and install sheathing
- c. Install dryvit system on front of building

- 1.2 Revision of Scope: The City may revise the approved objectives, accomplishments, and budget items in PARTS B and C when necessary. The Landholder may request a budget revision at any time throughout the duration of this Agreement. However, prior to any purchases under the new budget, the Landholder must obtain the City's written approval of the revision, in the form of a letter, a fax, or an email sent by Wichita Housing & Community Services Department, 332 N. Riverview, Wichita KS 67203.
- 1.3 Projects Involving Construction or Renovation: For all projects requiring building construction or renovation, the construction/renovation must comply with the City building code and all zoning regulations. Additionally, for construction/renovation projects, including façade improvements, a City official will complete a site inspection prior to reimbursement draws to ensure that materials for which a reimbursement is requested are in place on the building. Reimbursements for construction/building materials and façade improvements will only be made once the materials have been installed or applied.

2. COMMENCEMENT AND COMPLETION

- 2.1 Time of Performance: The Landholder's activities for implementation of the façade improvements are to commence as soon as a Notice to Proceed has been issued, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract through a period ending no later than January 31, 2011, unless an extension has been approved by the City on or prior to that date OR unless the Agreement is terminated earlier in accordance with other provisions herein. Following the completion of the façade improvements, this term of this Agreement shall continue for an additional three (3) years thereafter, unless the Agreement is terminated earlier in accordance with other provisions herein.

3. COMPENSATION AND USE OF FUNDS

Regulation for Use of Funds: The use of funds received pursuant to this Agreement shall be in accordance with the requirements of the Housing and Community Development Act of 1974 (as amended), 24 CFR Part 570, American Recovery and Reinvestment Act of 2009, other regulations governing the use of contract funds, and any amendments or policy revisions thereto which shall become effective during the term of this Agreement. *It is the Landholder's responsibility to read, understand, and comply with these regulations.*

- 3.1 Uniform Grant Administrative Requirements and Cost Principles: During the administration of this contract, the Landholder shall comply with, and adhere to:

- a. Office of Management and Budget (OMB) Circular No. A-110, Uniform Administrative Requirements of Grants and Other Agreements with Institution of Higher Education, Hospitals and Other Nonprofit Organizations; and
- b. OMB Circular No. A-122, Cost Principles for Nonprofit Organizations; and
- c. OMB Circular No. A-21, Cost Principles for Colleges and Universities, as applicable.

- 3.2 Total Payments: Total amount of funds provided by the City to the Landholder under this Agreement shall not exceed \$37,077.00 . Draw requests must be received by the City within 15 days following the Landholder's payment to the contractor. At the sole discretion of the City, any funds remaining unexpended as of the termination date of this Agreement may be de-obligated from this Agreement and made available for other eligible projects, as determined appropriate by the City.
- 3.3 Reimbursement Requests: This is a cost-reimbursement Agreement. Disbursement of funds under this Agreement may be requested only for necessary, reasonable, and allowable costs described in PART B, and for which the Landholder has made payment during the period of performance set forth in item Section 2.1 above. The City agrees to reimburse the Landholder for such costs, but solely up to the amount approved for such costs in the project budget, and payment shall be made upon receipt of a detailed invoice accompanied by a progress report from the Landholder specifying the services performed and expenses incurred. Equipment purchases are ineligible expenses. All requests for reimbursement must be accompanied by documentation of payment for eligible expenses (i.e., invoices, receipts, bills from vendors, copies of checks, time sheets, etc.), and other supporting documentation. Alternatively, Landholder may elect, when submitting required documentation, to have payment issued directly for the invoiced contractor services, as by a check made jointly payable to the Landholder and the contractor.
- 3.4 Double Reimbursement: The Landholder must not claim reimbursement from the City under this Agreement for any portion of its obligations that has already been or will be reimbursed by another source of revenue.
- 3.5 Restriction on Disbursements: CDBG funds shall not be disbursed to a Landholder or contractor except pursuant to a written contract, which incorporates by reference the general conditions of this Agreement. Disbursements may be suspended or terminated under this Agreement upon refusal to accept any additional conditions that may be imposed by the City at any time or if the entitlement funds to the City under the Federal Act(s) are suspended or terminated.
- 3.6 Withholding Payments: All payments to the Landholder are subject to the Landholder's compliance with this Agreement. A breach of the Agreement is grounds for non-payment until such corrective measures are made which will resolve Agreement non-compliance.
- 3.7 Closeout Reimbursement: Closeout billings are to be submitted within thirty (30) days after termination of the contract. If not submitted, the unexpended funds shall revert to the City.
- 3.8 Program Income: The Landholder agrees to abide by the Program Income Requirements set forth in 24 CFR 570.504(c). Program Income is defined as gross income received by a unit of local government (City) or a contractor of the City (such as Landholder) that was generated from the use of CDBG funds, and will be managed in accordance with HUD regulations governing program income.

The Landholder agrees to remit all Program Income to the City within fifteen (15) days of its receipt, unless a request is made to the City within that same fifteen (15) day period indicating that the Landholder would like to spend those funds on other CDBG-R-eligible façade improvement costs. The Landholder must obtain City and/or HUD approval of such requests, in writing, prior to such a proposed expenditure of Program Income. Should these requests be approved, verification of the expenditure of Program Income must be provided to the City no later than the contract completion date described in Section 2.1 of this Agreement. If the Landholder, after City approval, chooses not to remit Program Income to the City, the Landholder must spend all Program Income on eligible CDBG-R façade improvement activities prior to requesting additional reimbursements from the City.

Program Income that is received by the Landholder before closeout of the grant that generated the income is treated as additional CDBG-R funds and is subject to all federal regulations and policies governing the program. Under limited circumstances, the City may approve the use of CDBG-R Program Income for the purpose of capitalizing a revolving loan fund for specific identified activities. Payments to a revolving loan fund are Program Income and must substantially be disbursed from the revolving loan fund before additional grant funds are drawn from the City for revolving loan fund activities.

Regardless of whether Program Income is remitted to the City or spent on other CDBG-R-eligible costs, documentation of the receipt of Program Income, such as supporting schedules identifying the project and the source of income, must be submitted to the City within fifteen (15) days of its receipt. When Program Income is generated by an activity that is only partially assisted with CDBG-R funds, the Program Income shall be prorated to reflect the percentage of said funds used. Donations to the program covered by this agreement are not considered program income.

At the end of the term of this Agreement, as described in Section 2.1, the City may require remittance of all or part of any Program Income balances (including investments thereof) held by the Landholder (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum draw down, or cash or investments held for Section 108 security needs).

4. USE AND DISPOSITION OF PROPERTY

- 4.1. Once the façade improvements provided for herein have been completed, the Landholder shall not, without the express written consent of the City, signed by an authorized representative of the City, undertake or permit any construction, alteration, remodeling or other action which would materially affect the exterior facade improvements on the premises (including, without limitation the exterior walls, the roofs or chimneys) or which would adversely affect the structural soundness of improvements on the premises (provided, however, that the foregoing shall not prevent maintenance and repairs undertaken in the ordinary course of the Landholder's business, with such repairs/maintenance not requiring the City's consent hereunder.) In the event the City does consent to construction, alteration, remodeling or other action which would affect the exterior facade improvements on the premises, the Landholder agrees that such construction, alteration, remodeling or other action will conform with applicable local and state standards for construction or restoration or rehabilitation of historic property. The Landholder agrees at all times to maintain the premises in good and sound state of repair and to bear the cost of all maintenance and repair of the premises.
- 4.2. The property shall not be divided, diminished or subdivided nor shall the property ever be devised or conveyed except as a unit.
- 4.3. The premises shall only be used for a use consistent with the zoning ordinances of the City of Wichita.
- 4.4. No other structures may be constructed on the property during the term of this Agreement without the express written permission of the City, signed an authorized representative of the City (provided, however, that the foregoing shall not prevent construction relating to (i) replacement of the existing structures on the property due to reasonable wear and tear, casualty or condemnation; and (ii) construction of appurtenances to the premises, so long as the same do not adversely impact the building but do comply with applicable code and the terms of this Agreement).
- 4.5. No utility transmission lines, except those required by the existing structures or by structures permitted by the City, may be placed on or over the property.

- 4.6. No material topographical changes shall be made or allowed on the premises without the express written permission of the City, signed by an authorized representative of the City.
- 4.7. Landholder agrees that representatives of the City, its successors or assigns, shall be permitted at all reasonable times to inspect the premises. Inspections will normally take place on the exterior of the structures on the premises; however, Landholder agrees that representatives of the City, its successors and assigns, shall be permitted to enter and inspect the interior of the premises to insure maintenance of structural soundness. Inspection of the interior of the structures will not take place more often than annually, in the absence of deterioration, and such inspection shall not materially and adversely impact Landholder's business activities in the premises. Inspection of the interior of the structures will be made at a time mutually agreed upon by the Landholder and the City, its successors or assigns, and Landholder will not unreasonably withhold consent in determining a date and time for such inspections.
- 4.8. In the event of a violation of any covenant or restriction herein, the City, its successors and assigns, following no less than thirty (30) days notice to Landholder of the violation, may institute suit to enjoin such violation and to require restoration of the premises in compliance with the covenants or restrictions herein. The City, its successors or assigns, shall also have available all legal and equitable remedies to enforce Landholder's obligations hereunder (following expiration of the thirty (30) day notice and cure period set forth above), and in the event Landholder is found to have violated any of their obligations following expiration of such notice and cure period, Landholder shall reimburse the City, its successors and assigns, for any costs or expenses incurred in connection therewith, including court costs and reasonable attorneys' fees. In addition, Landholder acknowledges that the City has reimbursed or will reimburse up to the grant amount in CDBG-R funds budgeted for this project to defray costs of a portion of Landholder's façade improvements, and Landholder further acknowledges that, in the event of Landholder's violation of any covenant or restriction herein contained for the preservation, maintenance or repair of the façade improvements during the term of this Agreement, the City will not have received the social and economic development benefits expected in connection with its application of CDBG-R funds, and the resulting loss to the City will be difficult to measure. In such event, the Landholder covenants to repay to the City, on demand, as contractual or liquidated damages, the full amount of \$37,077.00, or such lesser amount as shall represent the total amount of budgeted CDBG-R funds theretofore actually paid by the City to reimburse façade improvement costs under this Agreement.
- 4.9. Landholder agrees that these covenants and restrictions will be inserted by it in any subsequent deed or other legal instrument by which it divests itself of either the fee simple title or its possessory interest in the premises, or any part thereof during the term of this Agreement. Landholder agrees to give the City written notice of any sale or mortgage of the premises or any part thereof within a reasonable time after such sale or mortgage.
- 4.10. Landholder agrees to maintain the facade of the premises in materially its original condition and configuration or in a condition or configuration which is agreed to by the City.
- 4.11. Nothing herein contained shall impose any obligation or liability on the City for the restoration, renovation, preservation or maintenance of the facade of the premises or any part of the premises. Excepting any damage/expenses/claims due to the City's gross negligence or willful misconduct, the Landholder shall indemnify and hold harmless the City from any liability for any and all claims, demands, damages, judgments, costs or expenses in connection with the restoration, renovation, preservation and maintenance of the facades of the premises or any part thereof or in connection with the failure to restore, renovate, preserve or maintain the facades of the premise or any part of the premises.
- 4.12. The Landholder shall maintain insurance on the premises in such amount and on such terms as will allow the City to restore, repair or rebuild the facade of the premises in the event the facade is damaged or destroyed. In

the event of damage to or destruction of the facades of the premises, the Landholder alone may determine that the facade of the premises cannot be reasonably restored, repaired or reconstructed. In such event, the City shall be entitled to receive from the Landholder an amount equal to the full amount of CDBG-R funds theretofore paid by the City to reimburse façade improvement costs under this Agreement. However, any payment to the City under the terms of this paragraph shall not terminate the restrictions, insurance and maintenance obligations of the Landholder herein unless the façade is fully destroyed beyond reasonable ability to repair (as determined by Landholder in its reasonable discretion), and the terms of this Agreement which are still applicable to the premises shall remain in full force and effect. The provisions of this paragraph shall apply whether or not the Landholder maintains the insurance coverage required by this paragraph. In the event the City receives any payment under the terms of this paragraph, the City shall use such payment in a manner consistent with the purpose of this Agreement and the CDBG-R program.

- 4.13. Landholder acknowledges that the rights granted to the City herein give rise to a property right, vested immediately, with fair market value that is a minimum ascertainable portion of the fair market value of the premises. Thus, if a subsequent unexpected change in the conditions surrounding the premises makes it impossible or impracticable to preserve the premises for the purposes for which the façade improvements were approved and restrictions imposed by this Agreement are terminated by judicial proceedings, the City, on a subsequent sale, exchange or involuntary conversion of the premises, will be entitled to a portion of the proceeds equal to the full amount of CDBG-R funds theretofore expended by the City to reimburse façade improvement costs under this Agreement, unless state law determines that the Landholder is entitled to full proceeds from the conversion without regard to the terms of the prior restrictions imposed by this Agreement. In the event the City receives such proceeds from the subsequent sale, exchange or involuntary conversion of the premises, the City shall use such proceeds in a manner consistent with the purposes of this Agreement and the CDBG-R program.

5. ASSIGNMENTS

- 5.1 Assignability: Neither the City nor the Landholder shall assign, sublet, or transfer their interest in this Agreement without the prior written consent of the other.
- 5.2 Subcontracting/Third Party Contracts: The very nature of certain project activities requires subcontracting. Third parties may be procured for a variety of services, including but not limited to demolition, construction, and renovation; legal services; and engineering services. The Landholder agrees to furnish the City with a copy of each third party contract that it executes in the performance of the work to be undertaken within the scope of this Agreement. Furthermore, the Landholder must incorporate in any and all such contracts being paid or reimbursed with CDBG-R funding provisions which will obligate each of its subcontractors or partners to comply with all federal laws and regulations applicable to this program. Any third party contract that is not in accordance with the outlined budget in this Agreement shall be subject to the advance, written approval of the City. Furthermore, the City shall not be obligated or liable hereunder to any party other than the Landholder.

6. AUDITS AND INSPECTIONS

- 6.1 Audits and Inspections: The Landholder must establish an adequate accounting system on a current basis in accordance with generally accepted accounting principles and standards and in accordance with any specific requirements of the Controller of the City of Wichita. Landholder personnel will make available to The City staff and any other auditor authorized by the City, all accounting records needed to conduct an evaluation of the accounting system and accounting records. If any portion of the funds approved by this contract is subcontracted to other organizations for the delivery of objectives and criteria, the Landholder will ensure that the fiscal and performance records of the subcontractor will be available for inspection by Controller Office personnel or duly authorized auditors, by including appropriate clauses in all of its subcontracts.

7. LANDHOLDER RESPONSIBILITIES

- 7.1 Compliance with Laws: All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments. Further, the Landholder agrees to perform services pursuant to the provisions of this contract and Federal and City regulations, rules and policies and special assurances included therein.
- 7.2 Non-Municipal Personnel and Services: Any services outside the budget line or the Scope of Services which the Landholder deems necessary to assign to a subcontractor must first have written approval from the City unless otherwise specified.

8. DOCUMENTATION AND RECORD KEEPING

- 8.1 Establishment and Maintenance of Records: The Landholder shall establish and maintain records as prescribed by HUD and/or the City, with respect to all matters covered by this contract.
- 8.2 City Record Requirements: The City is required to maintain records such as those listed below and the Landholder is expected to provide related documentation upon request by the City. Such records shall include but are not limited to:
- a. Records providing a full description of each activity undertaken;
 - b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
 - c. Records required to determine the eligibility of activities;
 - d. Records which demonstrate compliance with the requirements in 24 CFR 570.505 regarding any change of use of real property acquired or improved with CDBG assistance;
 - e. Records that demonstrate compliance with citizen participation requirements;
 - f. Records which demonstrate compliance with requirements in 24 CFR 570.606 regarding acquisition, displacement, relocation, and replacement housing;
 - g. Records documenting compliance with all Federal Fair Housing and Equal Opportunity regulations in the use of CDBG funds;
 - h. Financial records that document all transactions and that can be properly documented and audited, as required by 24 CFR 570.502;
 - i. Copies of completed applications for façade improvement received to date;
 - j. Percentage of property value improvement;
 - k. Agreements and other records related to lump sum disbursements to private financial institutions for financing rehabilitation as prescribed in 24 CFR 570.513;
 - l. Other records necessary to document compliance with Subpart K of 24 CFR 570;
 - m. Copies of all bid documents, bids received, RFPs, RFQs, and any other procurement documents;
 - n. Copies of all third party or subcontracts; and
 - o. Copy of all Davis-Bacon Act related documents;
 - p. Number of jobs created and number of jobs retained;
 - q. Detailed records on Landholder's organization, financial and administrative systems, and the specific CDBG-funded project(s) or activities.
- 8.3 Retention: The Landholder shall retain all records of all project expenses, activities, correspondence, records pertinent to any and all expenditures incurred under this Agreement, and any other information as requested by the City or by HUD for a period of five (5) years after the termination of all activities funded under this Agreement, or after the resolution of all Federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Agreement shall be retained for five years after final disposition of such property. If any litigation, claim, negotiation, or other action involving the records has been started before the expiration of the five year period, the records must be retained until completion of the action

and resolution of issues which arise from it, or until the end of the five year period, whichever is later. All files and records will be made available during normal business hours and other reasonable times for review by the City or by HUD.

- 8.4 Documentation of Costs: All costs shall be supported by proper documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.
- 8.5 Property and Affordability Retention: The Landholder agrees not to sell the property listed in this Agreement for a period of three years (3) following the completion of the project, and if the Landholder is not the owner of the building, Landholder will obtain (and furnish the City a copy of) the building owner's written agreement not to sell the property listed in this Agreement for a period of three years following the completion of the project, and not to raise the Landholder's rent for the same period of time.
- 8.6 Access to Records: The Landholder agrees that the City, HUD, or any authorized representative has access to and the right to examine all records, books, papers, or documents related to the project. The City reserves the right, on demand and without notice, to review all of the Landholder's files associated with this Agreement where payments are based on a record of time, salaries, materials, or actual expenses. The same right to review will be imposed upon any third party or subcontractor of the Landholder; therefore, it is the Landholder's responsibility to ensure that any contract entered into with a third party or subcontractor contains all necessary clauses and language required by the City and/or HUD to ensure compliance with this Agreement and with all local, State, and Federal regulations.

9. PROGRAM EVALUATION

- 9.1 Performance Measures: Anticipated outcomes are improved curb appeal, increased in sales volume, energy savings from façade improvements if new windows and doors are installed, and increased property value.
- 9.2 Reporting: Record Requirements: the City is required to report to HUD on a quarterly and annual basis on all program activity from the Agreement with the Landholder through three (3) years past completion of the project. The Landholder is expected to provide information such as that listed below upon request by the City.
- a. description of all project activities that have taken place during the reporting period, including:
 - i. Photographs and newspaper/media clippings;
 - ii. Energy consumption/savings
 - iii. Sales volume

10. PROJECT MONITORING

- 10.1 General: City staff will evaluate progress based on the objectives, criteria, work schedule and budget in PART B, to determine if it is consistent with the initial purpose of the project, the City's strategies, comprehensive and neighborhood plans, and if it has a positive impact on the City and its neighborhoods. All data necessary to review and monitor program progress as determined by the City will be made available to City personnel by the Landholder. This includes, but is not limited to, performance records and interviews with the Landholder staff and program participants, as required by the City. City personnel will also make field inspections at the office/job site(s) during construction and not more than annually for three (3) years following construction.
- 10.2 Other Funding: If the attached Budget Detail, PART C, shows that funding for this program is to be provided from other sources, the receipt and expenditure of such funds must be adhered to as specified and is subject to review. All accounting records necessary to complete a review of other funding sources must be made

available to the City upon request. Any change in the attached budget that affects funding from sources other than the City must have prior written authorization from the City.

11. TERMINATION, SANCTIONS AND CLOSEOUTS

- 11.1 Termination: In the event that the Landholder fails to comply with any term of this Agreement, the City may suspend or terminate this Agreement, in whole or in part, or take other remedial action in accordance with 24 CFR 85.43. The City may also terminate this Agreement for convenience in accordance with 24 CFR 85.44.

Funding to be made available by the City under this Agreement has been approved by the U.S. Congress. In the event that sufficient funds are not appropriated, at the sole discretion of the City, this Agreement may be terminated in whole or in part.

Under the conditions described above, the Landholder may be required to refund all funds awarded during the period of this Agreement that have already been spent by the Landholder and reimbursed by the City.

Should the City desire to terminate this Agreement for noncompliance, it shall first give written notice of the reason for proposed termination. The notice shall set forth the following:

- a. Reasonable description of the default/reason for termination;
- b. Demand for a cure; and
- c. Statement of reasonable time within which a cure must be affected. Such reasonable time will be presumed to be not less than five (5), nor more than fifteen (15), business days. Such times shall be measured from the actual receipt of said notice.

- 11.2 Imposition of Sanctions: The City reserves the right to impose sanctions on the Landholder for the violation of any of the terms of this Agreement, failure to comply with any terms in this Agreement, or failure to undertake the project in a timely manner. If the City elects to impose sanctions they may include, but are not necessarily limited to, withholding any and all project funds, termination of the Agreement, requiring the Landholder to return funds already received, or barring the Landholder from future funding.

- 11.3 Closeout: The Landholder's obligation to the City shall not end until all closeout requirements are completed. Activities during the close-out period shall include, but are not limited to, submitting the final reimbursement request and final activity/progress report to the City, disposing of program assets (program income balances, and receivable accounts to the City), and determining the custodianship of records. Grant closeout is not considered final until the City is fully satisfied that project objectives have been met, at which point the City will issue a close-out/grant finalization letter to the Landholder.

- 11.4 Property of the City: Any data or material furnished by the City to the Landholder shall remain the property of the City, and when said data or material is no longer needed by the Landholder for the performance of this Agreement, it shall be returned to the City.

12. TAXES

- 12.1 Payment of Taxes: The City shall not be liable for the payment of any taxes levied by the City, State, or Federal Governments against the Landholder, and all such taxes shall be paid by Landholder; however, should the City nevertheless pay any such taxes, the Landholder shall immediately reimburse the City.

13. LAWS, REGULATIONS AND SPECIAL CONDITIONS

The information in this Article is included for the convenience of the Landholder and to inform the Landholder of the diverse statutory and regulatory requirements to which the acceptance of funds makes them subject. *For the actual regulatory or statutory requirements, the Landholder should consult the actual laws,*

regulations, and documents referenced in this Article. In addition to the other requirements set forth herein, the Landholder shall likewise comply with the applicable provisions of Subpart K of 24 CFR 570, in accordance with the type of project assisted. All of the referenced regulations are available online, and upon request, the City may provide these materials to the Landholder.

- 13.1 Labor Standards: The Landholder and all subcontractors engaged in contracts in excess of \$2,000 for the construction, completion, rehabilitation, or repair of any building or work financed in whole or in part with assistance provided under this Agreement are subject to the Federal labor standards provisions which govern the payment of wages and the ratio of apprentices and trainees to journey workers. Under the terms of the Davis-Bacon Act, as amended, the Landholder is required to pay all laborers and mechanics employed on construction work wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor, and shall pay overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act (40 USC 327-332). The Landholder shall comply with all regulations issued pursuant to these Acts and with other applicable Federal laws and regulations pertaining to labor standards, including the Copeland "Anti-Kickback" Act. Provided, that if wage rates higher than those required under the regulations are imposed by state or local laws, nothing thereunder is intended to relieve the Landholder of its obligation, if any, to require payment of the higher rates.
- 13.2 Anti-Kickback Rules: Salaries of architects, draftsmen, technical engineers, and technicians performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Anti-Kickback Act of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 103; title 18 U.S.C., section 874; and Title 40 U.S.C., section 276c). The Landholder shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all third party contracts or subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations. Furthermore, the Landholder shall be responsible for the submission of affidavits required of subcontractors thereunder, except as the Secretary of Labor may specifically provide for variations of or exceptions from the requirements thereof.
- 13.3 Debarment and Suspension: In accordance with 24 CFR 24, the Landholder shall not employ or otherwise engage any debarred, suspended, or ineligible contractors or subcontractors to conduct any activities under this Agreement. The Landholder will consult appropriate references, including but not limited to the Excluded Parties Listing Service website at www.epls.gov, to ascertain the status of any third parties prior to engaging their services. The Landholder will submit to the City the names of contractors and subcontractors selected under this Agreement, including a certification by the Landholder that it has determined that none of these entities are presently debarred, suspended, or ineligible.
- 13.4 Emerging Business Enterprises: If a Landholder solicits or requests an invitation for bids, every effort feasible shall be made to contact emerging, minority-owned, and women-owned business enterprises for a response to the solicitation or invitation for bidders. If utilizing a minority subcontractor, the Landholder shall summarize what portion of the project the minority subcontractor handled. At the end of the project, the Landholder shall submit a summary of all payments made to the minority subcontractor(s). The Landholder shall submit all necessary forms with quarterly reports to assure compliance with this requirement.
- 13.5 Section 3 - Employment Opportunities for Area Residents: The Landholder and any authorized subcontractor shall be subject to all applicable provisions of the Housing and Community Development Act of 1974 (42 U.S.C. 5301), as amended, including but not limited to Executive Order 11246 and Section 3 of the Housing and Community Development Act of 1974, "Employment Opportunities for Business and Lower Income Persons in connection with Assisted Projects" (HUD 24 CFR 135). These require that, to the greatest extent feasible,

opportunities for training and employment be given to lower income residents of the project area, and contracts for work in connection with the project be awarded to businesses that are located in, or owned in substantial part by, persons residing in the area of the project. In all solicitations for bids, the contractor must, before signing the Contract, provide a preliminary statement of the work force needs and plans for possible training and employment of lower income persons. When Landholder utilizes the bidding procedure to obtain bids, the invitation or solicitation for bids shall advise prospective contractors of the requirements of Section 3 and the clause (Attachment A) shall be inserted as a component part of any contract or subcontract.

- 13.6 Building and Zoning Regulations and Permits: The Landholder agrees to comply with all laws of The City of Wichita and the State of Kansas. In particular, the Landholder shall comply with all applicable building and zoning regulations. In addition, the Landholder shall obtain all necessary permits for intended improvements or building activities.
- 13.7 Environmental Review: In accordance with 24 CFR 570.604, the activities under this Agreement are subject to environmental review requirements. Such requirements may include, but are not necessarily limited to, activities related to historic districts and/or properties, floodplain management and wetland protection, noise, wild and scenic rivers, air quality, farmlands protection, environmental justice, airports, site contamination, and hazardous facilities. There shall not be any costs incurred or obligation of funds until such time as an Environmental Review (ER) is completed for each project (generally one per project). The ER shall be completed by the City. The Landholder also agrees to comply with the following regulations insofar as they apply to the use of CDBG funds:
- a. Clean Air Act, 42 U.S.C., 1857, et seq.;
 - b. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under;
 - c. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR 50, as amended;
 - d. National Environmental Policy Act of 1969; and
 - e. HUD Environmental Review Procedures (24 CFR 58).
- Landholder should note that completion of the ER is the City's responsibility. Nothing in this section or in any other part of this Agreement should be construed as relieving the City of this responsibility or placing this responsibility on the Landholder.
- 13.8 Flood Disaster Protection: This Contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (PL 93-234). Use of any assistance provided under this Agreement for acquisition or construction in an area identified as having special flood hazards shall be subject to the mandatory purchase of flood insurance in accordance with the requirements of Section 102(a) of said Act.
- 13.9 Property Standards and Lead-Based Paint: All housing assisted shall meet the Statewide Building Code, the International Building Code, and the lead-based paint requirements in 24 CFR 570.608. In accordance with regulations, the Landholder shall adhere to lead-based paint notification and abatement practices, as applicable, and in no case shall use lead-based paint in the construction or rehabilitation of the properties assisted under this Agreement.
- 13.10 Section 106 - Historic Preservation Requirements: The Landholder agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and the procedures set forth in 36 CFR 800 insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the Kansas State Historic Preservation Officer for all acquisition, rehabilitation, and demolition of properties that are fifty years old or older, are located in or adjacent to a historic district, or that are included on a Federal, State, or local historic property list, or that have been determined

eligible for inclusion on such a list. The Landholder shall notify City staff immediately upon determining that a property may fall into this category.

- 13.11 Section 504 - Persons with Disabilities: The Landholder, in the implementation of projects funded by this Agreement and in all of its other operations, will comply with all requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794) (and the implementing regulations at 24 CFR 8), the Americans with Disabilities Act of 1990 (PL 101-336), and all state and local laws requiring physical and program accessibility to people with disabilities, and agrees to defend, hold harmless, and indemnify the City from and against any and all liability for any noncompliance on the part of the Landholder.
- 13.12 Discrimination Prohibited: No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Landholder receiving funds pursuant to this contract.
- The Landholder further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreements" as provided in Attachment B.
- 13.13 Fair Housing: The Landholder will comply with Title VIII of the Civil Rights Act of 1968 (PL 90-284, 42 U.S.C. 3601-20), as amended and will administer all funded projects related to housing and community development in a manner to affirmatively further fair housing. In all advertising of residential real estate for rent, sale or financing, the Landholder will ensure that the Equal Housing Opportunity logotype, statement or slogan is included as a means of educating the home seeking public that the property is available to all persons regardless of race, color, religion, sex, disability, familial status, or national origin. In all other advertising for goods or services, the Landholder will ensure that a statement is included in all formal, written advertisements regarding the Landholder being an Equal Opportunity Agency.
- 13.14 Nepotism: No person shall be employed or contracted with to make the façade improvements if a member of his or her immediate family is on the Board of Directors of the Landholder or is employed in an administrative capacity by the Landholder. For the purposes of this section, "immediate family" includes: wife, husband, daughter, son, mother, father, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, aunt, uncle, niece, nephew, stepparent and stepchild; "administrative capacity" includes those who have selection, hiring, supervisory or operational responsibility for the program.
- 13.15 Conflict of Interest: The Landholder hereby severally warrants that it will establish and adopt safeguards to prohibit members, officers, and employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Further, In accordance with 24 CFR 570.611, no member, officer, or employee of the Landholder who exercises any functions or responsibility with respect to the program during his or her tenure, or for one year thereafter, shall have any financial interest or benefit, direct or indirect, in any contract or subcontract, or the proceeds thereof, either for themselves or those with whom they have family or business ties, for work to be performed in connection with the program assisted under this Agreement.
- 13.16 Political Activity Prohibited:
- a. None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for partisan political activity.

- b. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

13.17 Lobbying Prohibited: None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas. The Landholder shall assure compliance with the regulations at 24 CFR Part 87 by submitting, and requiring all applicable subcontractors to submit, a certification of compliance with this provision.

The Landholder certifies to the best of its knowledge and belief that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Landholder to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the Federal contract, grant, loan, or cooperative agreement, the Landholder will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction.

13.18 Religious Organizations: 24 CFR Part 570 has been amended by the federal government to allow religious organizations to participate in projects funded with Federal resources. Landholder shall follow federal regulations, as amended.

14. MISCELLANEOUS CLAUSES AND NOTICES

14.1 Dissemination of Information: The Landholder, at such times and in such forms as HUD and/or the City may require, shall furnish to HUD and/or the City, such statements, records, reports, data and information as HUD and/or the City may request pertaining to matters covered by this contract. All reports, information, data and other related materials, prepared or assembled by the Landholder under this contract, are confidential and shall not be made available to anyone other than an appropriate agency of the United States government without the prior written approval of the City or as set forth in K.S.A. 45-201 et. seq.

14.2 Identification of Documents and Projects: All projects, reports, maps, news releases and/or other documents undertaken as part of this contract, other than documents exclusively for internal use with the City staff, shall contain the following posted information at the project site or the front cover or title page of any reports or documents, or in the case of maps, in an appropriate block: "The City of Wichita", then name of the Landholder, and, in the case of written material, the month and year of preparation and the following information regarding Federal assistance: "The (preparation/funding) of this project, report, map, document, etc., was financed (in whole or in part) through a grant from the U.S. Department of Housing and Urban Development and the City of Wichita under the provision of Title XII of Division A of the American Recovery and Reinvestment Act of 2009 under the Community Development Block Grant (CDBG-R)."

14.5 Copyrights: If this contract results in a book or other material that may be copyrighted, the author is free to copyright the work, subject to HUD regulations. HUD and the City reserve a royalty-free, non-exclusive and

irrevocable license to reproduce, publish or otherwise use and to authorize others to use all copyrighted material and all material that can be copyrighted.

- 14.6 Patents: Any discovery or invention arising out of or developed in the course of work aided by this contract shall promptly and fully be reported to HUD and the City for determination by HUD and the City as to whether patent protection on such invention or patent discovery shall be sought and how the rights in the invention or discovery, including rights under the patent issued thereon, shall be disposed of and administered, in order to protect the public interest. All such determinations are subject to HUD regulations.
- 14.7 Anti-Trust Litigation: For good cause, and as consideration for executing this contract, the Landholder, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all rights, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Landholder pursuant to this contract.

15. APPENDICES

All attachments referenced in this Agreement, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

- Attachment A – Section 3 Clause
- Attachment B – Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreements
 - Part A – Agreement
 - Part B – Performance Criteria/Objectives
 - Part C – Budget Detail
 - Part D – Performance Reports
 - Part E – Request for Reimbursement/Cost Control Statement

16. AUTHORIZATION TO ENTER INTO CONTRACT

The undersigned person signing as an officer on behalf of the Landholder, a party to this Agreement, hereby severally warrants and represents that said person has authority to enter into this Agreement on behalf of said Landholder and to bind the Landholder to this Agreement, and further that said Landholder has authority to enter into this Agreement and that there are no restrictions or prohibitions contained in any article of incorporation or bylaw against entering into this Agreement.

LANDHOLDER

Carmen Rosales
President

Date

Acknowledgement

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Carmen Rosales, (title) President who is personally known to me to be the same person who executed the foregoing instrument of writing on behalf of Connie's Mexico Cafe _____, and duly acknowledged the execution of the same as the act and deed of such company .

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Notary Public
My Appointment Expires:

BUILDING OWNER [IF DIFFERENT]

Click here to enter text.
Click here to enter text.

Date

Acknowledgement

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, (title) _____ who is personally known to me to be the same person who executed the foregoing instrument of writing on behalf of _____, and duly acknowledged the execution of the same as the act and deed of such company .

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Notary Public
My Appointment Expires:

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

ATTEST:

Karen Sublett
City Clerk

Acknowledgement

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 2010____, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Carl Brewer, Mayor of the City of Wichita, Kansas and Karen Sublett, City Clerk of such city, who are personally known to me to be the same persons who executed the foregoing instrument of writing, and duly acknowledged the execution of the same on behalf of, and as the act and deed of said city.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Notary Public
My Appointment Expires:

Approved as to Form:

Gary E. Rebenstorf
Director of Law

Part B
PERFORMANCE CRITERIA AND OBJECTIVES

ACTIVITY NAME: NEIGHBORHOOD FAÇADE IMPROVEMENT

LANDHOLDER INFORMATION

NAME: Connie's Mexico Café

CONTACT PERSON(S): Carmen Rosales

ADDRESS: 2227 N. Broadway, Wichita KS 67219

PHONE: (316) 832-9636

FAX:

EMAIL: Eagleswings47@hotmail.com

CONTRACT PERIOD: September __, 2010 through January 31, 2011

FUNDING SOURCE(S): ☒ CDBG

HUD OUTCOME PERFORMANCE MEASUREMENTS

NATIONAL OBJECTIVE(S): ☒ Low/Mod Benefit ☐ Slum/Blight ☐ Urgent Need

OBJECTIVE CATEGORY: ☐ Sustainable Living Environment ☐ Decent Housing
☒ Creating Economic Opportunities

OUTCOME CATEGORY: ☐ Availability/Accessibility ☐ Affordability
☒ Sustainability

The Landholder agrees:

1. It is the principal administrative and coordinating agency for this project, contracting and/or subcontracting outside services, as may be necessary, subject to compliance with all applicable local, state and federal laws; and
2. It is the responsible authority without recourse to the City regarding the settlement and satisfaction of all contractual and administrative issues arising out of the contract entered into; and
3. It will maintain, during the term of this agreement, a filing with the Secretary of the State of Kansas as a for profit corporation by the Internal Revenue Service. Evidence of such status will be provided to the City upon request.

Project Eligibility:

According to 24CFR570.209(b)(i)(v)(M) this project qualifies for meeting the CDBG National Objective for Low/Mod Area Benefit.

Additionally, this project is intended to increase curb appeal of the business receiving the grant, increase its property value, show an increase in annual sales volume, and increase energy efficiency if windows and/or doors are replaced.

1. The Business must be located inside the City limits of Wichita.
2. Ensure that the participating business qualifies as a Section 3 Business Concern in at least one of the following ways (a) at least 51% or more owned by Section 3 residents; or (b) employs Section 3 residents as at least 30% of its full time permanent staff; or (c) provides evidence of a commitment to subcontract to Section 3 Business Concerns, at least 25% of the contract amount.

HUD FY 2010 INCOME LIMITS

City of Wichita, Kansas

FAMILY SIZE	EXTREMELY LOW 30% OF MEDIAN	VERY LOW INCOME 50% OF MEDIAN	LOW INCOME 80% OF MEDIAN
1	\$13,400	\$22,300	\$35,700
2	\$15,300	\$25,500	\$40,800
3	\$17,200	\$28,300	\$45,900
4	\$19,100	\$31,850	\$50,950
5	\$20,650	\$34,400	\$55,050
6	\$22,200	\$36,950	\$59,150
7	\$23,700	\$39,500	\$63,200
8	\$25,250	\$42,050	\$67,300

Project Description: This program will address needed façade improvements on the building located at 2227 N. Broadway. Façade improvements are expected to make the building and business more appealing to the public and clientele and the business will have an increase in sales and hire low to moderate income persons.

Project Content: The Landholder shall complete the following objective(s) in a manner acceptable to the City, in accordance with the schedule, budget and conditions detailed herein. The City reserves the right to revise or otherwise alter established objective(s) and criteria during the grant period in an effort to allow for meaningful project measurement and evaluation which will directly impact future funding recommendations.

Goal: Increase viability of participating neighborhood businesses

Objectives:

1. Increase the business' curb appeal
2. Increase the business' annual sales volume
3. Increase the business' appraised property value
4. Decrease energy consumption and costs

Outcome Measures:

- Sales volume recorded annually and compared to previous years dating back one year prior to project start.
- Compare appraised property value with previous year data.
- Compare energy costs one year prior to project start and measure annually for three years.

Project Administration: Housing and Community Services Department

Procurement Methods: The Landholder shall use its own procurement practices which comply with applicable state and local laws, rules and regulations so long as those practices do not unduly limit bidding competition. Additionally, procurement made with federal grant funds shall adhere to the standards set forth in OMB Circular A-110, including:

1. Maintaining a code or standard of conduct governing the performance of the Landholder's officers, employees or agents engaged in awarding and administering contracts supported with Federal funds.
2. Advertising of procurement transactions as appropriate without regard to a dollar value in a manner allowing maximum free and open competition. No sole source procurement (obtaining only one bid) is permitted without prior approval for all purchases except small purchase procedures defined in A-110.
3. Invitations for bids shall be based on specifications developed by the Landholder and approved by City of Wichita. Said specifications shall be detailed to the extent necessary to solicit comparable bids without unduly limiting competitive bidding.
4. Bids will be awarded on the basis of the lowest and best bid, price and other factors considered.
5. The Landholder agrees to purchase services, goods and materials on an "as needed basis" and at the "lowest price obtainable".
6. The Landholder will maintain procurement files outlining procurement efforts for each bid, including names and addresses of bidders solicited, information pertaining to advertising, and solicitation of Small and Emerging Business Enterprise participation. Information will be maintained of bid tabulations, justification of bid award, letters of notification to bidders regarding bid award, and any other pertinent information.

Funding: It is mutually agreed by and between the City and the Landholder that for reimbursement of eligible and necessary expenses up to \$37,077, the Landholder will pay for street side façade improvements. Said funds will be used as set forth in the sections entitled Budget and Method of Payment. Any costs in excess of \$37,077 are the responsibility of the Landholder.

Budget: The City shall pay the Landholder as hereinafter set out; the maximum of \$37,077 for the activity described in this Agreement. Funding under this Agreement shall be originally budgeted as detailed in PART C. Adjustments to budget line items and categories may be made with agreement by both parties to this Agreement.

Method of Payment: The Landholder agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and CDBG program.

1. The City and the Landholder also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract.
2. The Landholder will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditure made under this Agreement will be retained in the Landholder's files for five (5) years after the final audit of expenditures made under this contract.
3. Reimbursement: The City agrees to fund cost of labor and materials used to make façade improvements. Reimbursement for items shown in Part C will be granted upon submission of an accurate Contractor's Invoice and supporting documentation including but not limited to timesheets, invoices, receipts, and Davis-Bacon Certified Payroll Reports and other documentation showing Landholder has already paid the contractor in part or in full. Alternatively, Landholder may elect, when submitting required documentation, to have payment issued directly for the invoiced contractor services, as by a check made jointly payable to the Landholder and the contractor.

Performance Reports, Financial and Client Files: The Landholder shall establish and maintain accounting and project records specifically for the federal funds awarded. Original documentation supporting all reimbursed expenditures and other project records will be retained by the Landholder for five (5) years after the final audit of expenditures made under this Agreement.

Records must be maintained documenting receipts of CDBG program income and expenditures of the same. Goods and services received as program income in lieu of cash must require valuation as an in-kind item with appropriate records maintenance and reporting in the same manner as other program income. Any CDBG attributable income generated by this program shall be retained to offset project costs. Donations to the project covered by this agreement are not considered program income.

Additionally, a narrative or other description of progress may be required.

Project Evaluation: The City will evaluate this project based on the objective(s) stated in Part B. Failure by the Landholder to provide the level of service stated herein may result in a determination by the City to modify the level of payment to the Landholder on a pro rata basis with level of service. Landholder records are subject to review by the City to ensure the accuracy and validity of information reported in monthly progress reports.

BUDGET DETAIL

FUNDING SOURCE	DEPT./DIVISION	PROJECT/ACTIVITY	GRANT/DETAIL/OCA
American Recovery & Reinvestment Act (CDBG-R)	Housing & Community Services	Neighborhood Façade Program	980901/010200/980905

Account Classification			Budget
PERSONAL SERVICES			
01	1195	Delegate Agencies – Payroll	
	1495	Delegate Agencies – Employee Benefits	
	1595	Delegate Agencies – Payroll Taxes	

TOTAL PERSONAL SERVICES**CONTRACTUAL SERVICES**

02	2195	Delegate Agencies – Utilities	
	2295	Delegate Agencies – Telephone	
	2296	Delegate Agencies – Postage & Shipping	
	2395	Delegate Agencies – Travel	
	2396	Delegate Agencies – Conferences	
	2495	Delegate Agencies – Insurance	
	2505	Delegate Agencies – Contractors	\$37,077.00
	2703	Maintenance – Equipment	
	2795	Delegate Agencies – Equipment Rent	
	2895	Delegate Agencies – Building Maintenance	
	2902	Advertising	
	2906	Membership Dues	
	2917	Printing and Photocopying	
	2996	Delegate Agencies – Other Contractuals	
	2997	Delegate Agencies – Administrative Charges	

TOTAL CONTRACTUAL SERVICES**COMMODITIES**

03	3195	Delegate Agencies – Supplies	
	3196	Delegate Agencies – Supplies Food	
	3995	Delegate Agencies – Miscellaneous Commodities	

TOTAL COMMODITIES**CAPITAL OUTLAY**

TOTAL CAPITAL OUTLAY	0
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GRAND TOTAL

PART D
PERFORMANCE REPORTS

1. Improve curb appeal – before and after photos
2. Business volume

SECTION 3 CLAUSE

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

H. Section 3 Goals. The City of Wichita in accordance with 24 CFR Part 135, has established goals for CDBG assisted projects. All Section 3 covered contracts shall include the Section 3 clause as shown above. Consistent with existing Federal, State and local laws and regulations, the City of Wichita has set the following goals to comply with the Section 3 requirements:

- Committing to employ Section 3 residents at a rate of 30% of the aggregate of new hires for housing and community development assisted projects
- Committing to contract a minimum of 10% of the total dollar amount of all other Section 3 covered contracts, such as community development infrastructure improvements or professional services.

Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of CDBG funds for the following activities:

- Housing construction
- Housing rehabilitation
- Other public construction

**REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Nondiscrimination – Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
 - 1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including

apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Nondiscrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier;
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency.

D. Exempted from these requirements are:

3. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
4. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Agenda Item No. XII-12

**City of Wichita
City Council Meeting
October 26, 2010**

TO: Mayor and City Council

SUBJECT: Agreement to Respread Assessments: Woods North 2nd Addition (District II)

INITIATED BY: Department of Finance

AGENDA: Consent

Recommendation: Approve the Agreement and amending ordinances.

Background: The landowners, Firethorne, LLC, Paul Gray Homes, LLC, and Robl Construction, Inc. have submitted an Agreement to respread special assessments within Woods North 2nd Addition. Bond Counsel determined that the appropriate procedure to accommodate the request is by amending the ordinances.

Analysis: The land was originally included in improvement districts for Lateral 1, Main 26, FMC Lateral Sanitary Sewer Improvements, Street Improvements, and Water Main Improvements. Without the Respread Agreement and amending ordinances, the assessments will be spread on a square foot basis.

Financial Considerations: There is no cost to the City.

Goal Impact: The City of Wichita aggressively uses special assessments to lower the cost of residential developments. In doing so, the City's program satisfies the City Council's goal to promote Economic Vitality and Affordable Living. The program supports this goal through partnering with stakeholders in the development community and sustains affordable living by lowering the costs of commercial property development.

Legal Considerations: The Agreement and amending ordinances have been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the Agreement and amending ordinances and authorize the necessary signatures.

Attachments: one original and 14 copy of the Respread Agreement and amending ordinances.

_____Published in The Wichita Eagle November 5, 2010 _____

ORDINANCE NO. 48-884

AN ORDINANCE AMENDING ORDINANCE NO. 48-455 AND RESOLUTION NO. 08-058 OF THE CITY OF WICHITA, KANSAS, FOR THE PURPOSE OF PAYING A PORTION OF THE COST OF **CONSTRUCTING WATER DISTRIBUTION SYSTEM NO. 448-90363, TO SERVE WOODS NORTH ADDITION, South of 29th St. North, West of 127th St. East (470-081)**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The last sentence of Section 4 of Resolution 08-058 adopted on February 5, 2008, is hereby amended to read as follows:

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis; provided, however Lots 1 through 15, Block A, and Lots 1 through 4, Block B, Woods North 2nd Addition, which were replatted after the improvement district was created, shall each be assessed 1/19 of the total cost apportioned to the property described above.

SECTION 2. SECTION 1 OF ORDINANCE 48-455 is hereby amended to read as follows. Special assessments to pay the cost of said improvement as authorized by **Resolution No. 08-058**, adopted **February 5, 2008**, and published **February 9, 2008**, and amended by this Ordinance be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessment for said improvement as follows:

LEGAL OF PARCEL IN BENEFIT DISTRICT	ASSESSMENT
LOT 1 BLOCK A WOODS NORTH 2 ND ADD	767.64
LOT 2 BLOCK A WOODS NORTH 2 ND ADD	767.64
LOT 3 BLOCK A WOODS NORTH 2 ND ADD	767.64
LOT 4 BLOCK A WOODS NORTH 2 ND ADD	767.64
LOT 5 BLOCK A WOODS NORTH 2 ND ADD	767.64
LOT 6 BLOCK A WOODS NORTH 2 ND ADD	767.64
LOT 7 BLOCK A WOODS NORTH 2 ND ADD	767.64
LOT 8 BLOCK A WOODS NORTH 2 ND ADD	767.64
LOT 9 BLOCK A WOODS NORTH 2 ND ADD	767.64
LOT 10 BLOCK A WOODS NORTH 2 ND ADD	767.64
LOT 11 BLOCK A WOODS NORTH 2 ND ADD	767.64
LOT 12 BLOCK A WOODS NORTH 2 ND ADD	767.64
LOT 13 BLOCK A WOODS NORTH 2 ND ADD	767.64

LOT 14 BLOCK A WOODS NORTH 2 ND ADD	767.64
LOT 15 BLOCK A WOODS NORTH 2 ND ADD	767.64
LOT 21 BLOCK A WOODS NORTH ADD	583.41
LOT 22 BLOCK A WOODS NORTH ADD	583.41
LOT 23 BLOCK A WOODS NORTH ADD	583.41
LOT 24 BLOCK A WOODS NORTH ADD	583.41
LOT 25 BLOCK A WOODS NORTH ADD	583.41
LOT 26 BLOCK A WOODS NORTH ADD	583.41
LOT 27 BLOCK A WOODS NORTH ADD	583.41
LOT 28 BLOCK A WOODS NORTH ADD	583.41
LOT 29 BLOCK A WOODS NORTH ADD	583.41
LOT 30 BLOCK A WOODS NORTH ADD	583.41
LOT 31 BLOCK A WOODS NORTH ADD	583.41
LOT 32 BLOCK A	583.41

WOODS NORTH ADD	
LOT 33 BLOCK A WOODS NORTH ADD	583.41
LOT 34 BLOCK A WOODS NORTH ADD	583.41
LOT 35 BLOCK A WOODS NORTH ADD	583.41
LOT 36 BLOCK A WOODS NORTH ADD	583.41
LOT 37 BLOCK A WOODS NORTH ADD	583.41
LOT 38 BLOCK A WOODS NORTH ADD	583.41
LOT 39 BLOCK A WOODS NORTH ADD	583.41
LOT 40 BLOCK A WOODS NORTH ADD	583.41
LOT 41 BLOCK A WOODS NORTH ADD	583.41
LOT 42 BLOCK A WOODS NORTH ADD	583.41
LOT 43 BLOCK A WOODS NORTH ADD	583.41
LOT 44 BLOCK A WOODS NORTH ADD	583.41
LOT 45 BLOCK A WOODS NORTH ADD	583.41

LOT 46 BLOCK A WOODS NORTH ADD	583.41
LOT 1 BLOCK B WOODS NORTH 2 ND ADD	767.64
LOT 2 BLOCK B WOODS NORTH 2 ND ADD	767.64
LOT 3 BLOCK B WOODS NORTH 2 ND ADD	767.64
LOT 4 BLOCK B WOODS NORTH 2 ND ADD	767.73
LOT 1 BLOCK C WOODS NORTH ADD	583.41
LOT 2 BLOCK C WOODS NORTH ADD	583.41
LOT 3 BLOCK C WOODS NORTH ADD	583.41
LOT 4 BLOCK C WOODS NORTH ADD	583.41
LOT 5 BLOCK C WOODS NORTH ADD	583.41
LOT 6 BLOCK C WOODS NORTH ADD	583.41
LOT 7 BLOCK C WOODS NORTH ADD	583.41
LOT 8 BLOCK C WOODS NORTH ADD	583.41
LOT 1 BLOCK D	583.41

WOODS NORTH ADD	
LOT 2 BLOCK D WOODS NORTH ADD	583.41
LOT 3 BLOCK D WOODS NORTH ADD	583.41
LOT 4 BLOCK D WOODS NORTH ADD	583.41
LOT 5 BLOCK D WOODS NORTH ADD	583.41
LOT 6 BLOCK D WOODS NORTH ADD	583.41
LOT 7 BLOCK D WOODS NORTH ADD	583.41
LOT 8 BLOCK D WOODS NORTH ADD	583.41
LOT 9 BLOCK D WOODS NORTH ADD	583.41
LOT 10 BLOCK D WOODS NORTH ADD	583.41
LOT 11 BLOCK D WOODS NORTH ADD	583.41
LOT 12 BLOCK D WOODS NORTH ADD	583.41
LOT 13 BLOCK D WOODS NORTH ADD	583.41
LOT 14 BLOCK D WOODS NORTH ADD	583.41

LOT 15 BLOCK D WOODS NORTH ADD	583.41
LOT 16 BLOCK D WOODS NORTH ADD	583.41
LOT 17 BLOCK D WOODS NORTH ADD	583.41
LOT 18 BLOCK D WOODS NORTH ADD	583.41
LOT 19 BLOCK D WOODS NORTH ADD	583.41
LOT 20 BLOCK D WOODS NORTH ADD	583.41
LOT 21 BLOCK D WOODS NORTH ADD	583.41
LOT 22 BLOCK D WOODS NORTH ADD	583.41
LOT 23 BLOCK D WOODS NORTH ADD	583.41
LOT 24 BLOCK D WOODS NORTH ADD	583.41
LOT 25 BLOCK D WOODS NORTH ADD	583.41
LOT 26 BLOCK D WOODS NORTH ADD	583.41
LOT 27 BLOCK D WOODS NORTH ADD	583.41
LOT 28 BLOCK D	583.41

WOODS NORTH ADD	
LOT 29 BLOCK D WOODS NORTH ADD	583.41
LOT 30 BLOCK D WOODS NORTH ADD	583.41
LOT 31 BLOCK D WOODS NORTH ADD	583.41
LOT 32 BLOCK D WOODS NORTH ADD	583.41
LOT 33 BLOCK D WOODS NORTH ADD	583.41
LOT 34 BLOCK D WOODS NORTH ADD	583.41
LOT 35 BLOCK D WOODS NORTH ADD	583.41
LOT 36 BLOCK D WOODS NORTH ADD	583.41
LOT 37 BLOCK D WOODS NORTH ADD	583.41
LOT 38 BLOCK D WOODS NORTH ADD	583.41
LOT 39 BLOCK D WOODS NORTH ADD	583.41
LOT 40 BLOCK D WOODS NORTH ADD	583.41
LOT 41 BLOCK D WOODS NORTH ADD	583.41

LOT 42 BLOCK D WOODS NORTH ADD	583.41
LOT 43 BLOCK D WOODS NORTH ADD	583.41
LOT 44 BLOCK D WOODS NORTH ADD	583.41
LOT 45 BLOCK D WOODS NORTH ADD	583.41
LOT 46 BLOCK D WOODS NORTH ADD	583.41
LOT 47 BLOCK D WOODS NORTH ADD	583.41
LOT 48 BLOCK D WOODS NORTH ADD	583.41
LOT 49 BLOCK D WOODS NORTH ADD	583.41
LOT 50 BLOCK D WOODS NORTH ADD	583.41
LOT 51 BLOCK D WOODS NORTH ADD	583.41
LOT 52 BLOCK D WOODS NORTH ADD	583.41
LOT 53 BLOCK D WOODS NORTH ADD	583.41
LOT 54 BLOCK D WOODS NORTH ADD	583.41
LOT 55 BLOCK D	583.41

WOODS NORTH ADD	
LOT 56 BLOCK D WOODS NORTH ADD	583.41
LOT 57 BLOCK D WOODS NORTH ADD	583.41
LOT 58 BLOCK D WOODS NORTH ADD	583.41
LOT 59 BLOCK D WOODS NORTH ADD	583.41
LOT 60 BLOCK D WOODS NORTH ADD	583.41
LOT 61 BLOCK D WOODS NORTH ADD	583.41
LOT 62 BLOCK D WOODS NORTH ADD	583.41
LOT 63 BLOCK D WOODS NORTH ADD	583.41
LOT 64 BLOCK D WOODS NORTH ADD	583.41
LOT 65 BLOCK D WOODS NORTH ADD	583.41
LOT 66 BLOCK D WOODS NORTH ADD	583.41
LOT 67 BLOCK D WOODS NORTH ADD	583.41
LOT 68 BLOCK D WOODS NORTH ADD	583.41

LOT 69 BLOCK D WOODS NORTH ADD	583.41
LOT 70 BLOCK D WOODS NORTH ADD	583.41
LOT 71 BLOCK D WOODS NORTH ADD	583.41
LOT 72 BLOCK D WOODS NORTH ADD	583.41
LOT 73 BLOCK D WOODS NORTH ADD	583.41
LOT 74 BLOCK D WOODS NORTH ADD	583.41
LOT 75 BLOCK D WOODS NORTH ADD	583.41
LOT 76 BLOCK D WOODS NORTH ADD	583.41
LOT 77 BLOCK D WOODS NORTH ADD	583.41
LOT 78 BLOCK D WOODS NORTH ADD	583.41
LOT 79 BLOCK D WOODS NORTH ADD	583.41
LOT 80 BLOCK D WOODS NORTH ADD	583.41
LOT 81 BLOCK D WOODS NORTH ADD	583.41
LOT 82 BLOCK D	583.41

WOODS NORTH ADD	
LOT 83 BLOCK D WOODS NORTH ADD	583.41
LOT 84 BLOCK D WOODS NORTH ADD	583.41
LOT 85 BLOCK D WOODS NORTH ADD	583.41
LOT 86 BLOCK D WOODS NORTH ADD	583.41
LOT 87 BLOCK D WOODS NORTH ADD	583.41
LOT 88 BLOCK D WOODS NORTH ADD	583.41
LOT 89 BLOCK D WOODS NORTH ADD	583.41
LOT 90 BLOCK D WOODS NORTH ADD	583.41
LOT 91 BLOCK D WOODS NORTH ADD	583.41
LOT 92 BLOCK D WOODS NORTH ADD	583.41
LOT 1 BLOCK E WOODS NORTH ADD	583.41
LOT 2 BLOCK E WOODS NORTH ADD	583.41
LOT 3 BLOCK E WOODS NORTH ADD	583.41

LOT 4 BLOCK E WOODS NORTH ADD	583.41
LOT 5 BLOCK E WOODS NORTH ADD	583.41
LOT 6 BLOCK E WOODS NORTH ADD	583.41
LOT 7 BLOCK E WOODS NORTH ADD	583.41
LOT 8 BLOCK E WOODS NORTH ADD	583.41
LOT 9 BLOCK E WOODS NORTH ADD	583.41
LOT 10 BLOCK E WOODS NORTH ADD	583.41
LOT 11 BLOCK E WOODS NORTH ADD	583.41
LOT 12 BLOCK E WOODS NORTH ADD	583.41
LOT 13 BLOCK E WOODS NORTH ADD	583.41
LOT 14 BLOCK E WOODS NORTH ADD	583.41
LOT 1 BLOCK F WOODS NORTH ADD	583.41
LOT 2 BLOCK F WOODS NORTH ADD	583.41
LOT 3 BLOCK F	583.41

WOODS NORTH ADD	
LOT 4 BLOCK F WOODS NORTH ADD	583.41
LOT 5 BLOCK F WOODS NORTH ADD	583.41
LOT 6 BLOCK F WOODS NORTH ADD	583.41
LOT 7 BLOCK F WOODS NORTH ADD	583.41
LOT 8 BLOCK F WOODS NORTH ADD	583.41
LOT 9 BLOCK F WOODS NORTH ADD	583.41
LOT 10 BLOCK F WOODS NORTH ADD	583.41
LOT 11 BLOCK F WOODS NORTH ADD	583.41
LOT 12 BLOCK F WOODS NORTH ADD	583.14
PROJECT 448 90363	103,263.30

SECTION 3. SECTION 1 OF ORDINANCE 48-455 as it formerly existed is hereby repealed.

SECTION 4. This ordinance shall take effect and be in force as of and on **November 5, 2010** after its passage and publication once in the official city paper and shall be recorded with the Register of Deeds of Sedgwick County, Kansas.

ADOPTED at Wichita, Kansas on **November 2, 2010.**

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk
(seal)

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

ORDINANCE NO. 48-885

AN ORDINANCE AMENDING ORDINANCE NO. 48-478 AND RESOLUTION NO. 08-061 OF THE CITY OF WICHITA, KANSAS, FOR THE PURPOSE OF PAYING A PORTION OF THE COST OF CONSTRUCTING **LATERAL 1, MAIN 26, FOUR MILE CREEK SEWER & MAIN 26, FOUR MILE CREEK SEWER, TO SERVE WOODS NORTH & GREENWICH BUSINESS CENTER ADDITIONS, South of 29th St. North, West of 127th St. East (468-84485/480-963).**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The last sentence of Section 4 of Resolution No. 08-061 adopted on February 5, 2008, is hereby amended to read as follows:

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis; provided, however Lots 1 through 15, Block A, and Lots 1 through 4, Block B, Woods North 2nd Addition, which were replatted after the improvement district was created, shall each be assessed 1/19 of the total cost apportioned to the property described above.

SECTION 2. SECTION 1 OF ORDINANCE 48-478 is hereby amended to read as follows. Special assessments to pay the cost of said improvement as authorized by **Resolution No. 08-061**, adopted **February 5, 2008** and published **February 9, 2008**, and amended by this Ordinance be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessment for said improvement as follows:

LEGAL OF PARCEL IN BENEFIT DISTRICT	ASSESSMENT
LOT 3 BLOCK 2 GREENWICH BUSINESS CENTER ADD	624.59

LOT 4 BLOCK 2 GREENWICH BUSINESS CENTER ADD	624.59
LOT 1 BLOCK 3 GREENWICH BUSINESS CENTER ADD	624.59
LOT 2 BLOCK 3 GREENWICH BUSINESS CENTER ADD	624.59
LOT 3 BLOCK 3 GREENWICH BUSINESS CENTER ADD	624.59
LOT 4 BLOCK 3 GREENWICH BUSINESS CENTER ADD	624.59
LOT 5 BLOCK 3 GREENWICH BUSINESS CENTER ADD	624.59
LOT 6 BLOCK 3 GREENWICH BUSINESS CENTER ADD	624.59
LOT 7 BLOCK 3 GREENWICH BUSINESS CENTER ADD	624.59
LOT 8 BLOCK 3 GREENWICH BUSINESS CENTER ADD	624.59
LOT 9 BLOCK 3 GREENWICH BUSINESS CENTER ADD	624.59
LOT 10 BLOCK 3 GREENWICH BUSINESS CENTER ADD	624.59
LOT 11 BLOCK 3 GREENWICH BUSINESS CENTER ADD	624.59
LOT 12 BLOCK 3 GREENWICH BUSINESS CENTER ADD	624.59
LOT 13 BLOCK 3	624.59

GREENWICH BUSINESS CENTER ADD	
LOT 14 BLOCK 3 GREENWICH BUSINESS CENTER ADD	624.59
LOT 15 BLOCK 3 GREENWICH BUSINESS CENTER ADD	624.59
LOT 1 BLOCK 4 GREENWICH BUSINESS CENTER ADD	624.59
LOT 2 BLOCK 4 GREENWICH BUSINESS CENTER ADD	624.59
LOT 3 BLOCK 4 GREENWICH BUSINESS CENTER ADD	624.59
LOT 1 BLOCK A WOODS NORTH 2 ND ADD	5,752.84 812.75
LOT 2 BLOCK A WOODS NORTH 2 ND ADD	5,752.84 812.75
LOT 3 BLOCK A WOODS NORTH 2 ND ADD	5,752.84 812.75
LOT 4 BLOCK A WOODS NORTH 2 ND ADD	5,752.84 812.75
LOT 5 BLOCK A WOODS NORTH 2 ND ADD	5,752.84 812.75
LOT 6 BLOCK A WOODS NORTH 2 ND ADD	5,752.84 812.75
LOT 7 BLOCK A WOODS NORTH 2 ND ADD	5,752.84 812.75
LOT 8 BLOCK A WOODS NORTH 2 ND ADD	5,752.84 812.75

LOT 9	5,752.84
BLOCK A	
WOODS NORTH 2 ND ADD	812.75
LOT 10	5,752.84
BLOCK A	
WOODS NORTH 2 ND ADD	812.75
LOT 11	5,752.84
BLOCK A	
WOODS NORTH 2 ND ADD	812.75
LOT 12	5,752.84
BLOCK A	
WOODS NORTH 2 ND ADD	812.75
LOT 13	5,752.84
BLOCK A	
WOODS NORTH 2 ND ADD	812.75
LOT 14	5,752.84
BLOCK A	
WOODS NORTH 2 ND ADD	812.75
LOT 15	5,752.84
BLOCK A	
WOODS NORTH 2 ND ADD	812.75
LOT 1	5,752.84
BLOCK B	
WOODS NORTH 2 ND ADD	812.75
LOT 2	5,752.84
BLOCK B	
WOODS NORTH 2 ND ADD	812.75
LOT 3	5,752.84
BLOCK B	
WOODS NORTH 2 ND ADD	812.75
LOT 4	5,752.88
BLOCK B	
WOODS NORTH 2 ND ADD	812.75
LOT 21	4,372.16
BLOCK A	
WOODS NORTH ADD	617.69
LOT 22	4,372.16
BLOCK A	
WOODS NORTH ADD	617.69
LOT 23	4,372.16

BLOCK A WOODS NORTH ADD	617.69
LOT 24 BLOCK A WOODS NORTH ADD	4,372.16 617.69
LOT 25 BLOCK A WOODS NORTH ADD	4,372.16 617.69
LOT 26 BLOCK A WOODS NORTH ADD	4,372.16 617.69
LOT 27 BLOCK A WOODS NORTH ADD	4,372.16 617.69
LOT 28 BLOCK A WOODS NORTH ADD	4,372.16 617.69
LOT 29 BLOCK A WOODS NORTH ADD	4,372.16 617.69
LOT 1 BLOCK C WOODS NORTH ADD	4,372.16 617.69
LOT 2 BLOCK C WOODS NORTH ADD	4,372.16 617.69
LOT 3 BLOCK C WOODS NORTH ADD	4,372.16 617.69
LOT 4 BLOCK C WOODS NORTH ADD	4,372.16 617.69
LOT 5 BLOCK C WOODS NORTH ADD	4,372.16 617.69
LOT 6 BLOCK C WOODS NORTH ADD	4,372.16 617.69
LOT 7 BLOCK C WOODS NORTH ADD	4,372.16 617.69

LOT 8 BLOCK C WOODS NORTH ADD	4,372.16 617.69
LOT 1 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 2 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 3 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 4 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 5 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 6 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 7 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 8 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 9 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 10 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 11 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 12 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 13	4,372.16

BLOCK D WOODS NORTH ADD	617.69
LOT 14 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 15 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 16 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 17 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 18 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 19 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 20 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 21 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 22 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 23 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 24 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 25 BLOCK D WOODS NORTH ADD	4,372.16 617.69
LOT 26 BLOCK D WOODS NORTH ADD	4,372.16 617.69

LOT 27	4,372.16
BLOCK D	
WOODS NORTH ADD	617.69
LOT 28	4,372.16
BLOCK D	
WOODS NORTH ADD	617.69
LOT 29	4,372.16
BLOCK D	
WOODS NORTH ADD	617.69
LOT 30	4,372.54
BLOCK D	
WOODS NORTH ADD	618.01
PROJECT 468 84485	371,761.70FRACTIONAL

SECTION 3. SECTION 1 OF ORDINANCE 48-478 as it formerly existed is hereby repealed.

SECTION 4. This ordinance shall take effect and be in force as of and on **November 5, 2010** after its passage and publication once in the official city paper and shall be recorded with the Register of Deeds of Sedgwick County, Kansas.

ADOPTED at Wichita, Kansas on **November 2, 2010.**

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk
(seal)

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

ORDINANCE NO. 48-886

AN ORDINANCE AMENDING ORDINANCE NO. 48-537 AND RESOLUTION NO. 08-430 OF THE CITY OF WICHITA, KANSAS, FOR THE PURPOSE OF PAYING A PORTION OF THE COST OF **CONSTRUCTED PAVEMENT ON WOODRIDGE, WOODSPRING, GARNETT, WOODBRIDGE CT., INCLUDING THE CUL-DE-SAC AND SIDEWALK, TO SERVE WOODS NORTH ADDITION, (PROJECT NO. 490-213/472-84651)**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The last sentence of Section 5 of Resolution 08-430 adopted on August 26, 2008, is hereby amended to read as follows:

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements; provided, however Lots 1 through 15, Block A, and Lots 1 through 4, Block B, Woods North 2nd Addition, which were replatted after the improvement district was created, shall each be assessed 1/19 of the total cost apportioned to the property described above.

SECTION 2. SECTION 1 OF ORDINANCE 48-537 is hereby amended to read as follows. Special assessments to pay the cost of said improvement as authorized by **Resolution No. 08-065**, rescinded by **08-430**, adopted **February 5, 2008, August 26, 2008**, and published **February 16, 2008, August 29, 2008**, corrected and republished **February 26, 2009**, corrected and republished **March 19, 2009**, and amended by this Ordinance be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessment for said improvement as follows:

LEGAL OF PARCEL IN BENEFIT DISTRICT	ASSESSMENT
LOT 1 BLOCK A WOODS NORTH 2 ND ADD	11,556.07
LOT 2 BLOCK A WOODS NORTH 2 ND ADD	11,556.07
LOT 3 BLOCK A WOODS NORTH 2 ND ADD	11,556.07
LOT 4 BLOCK A WOODS NORTH 2 ND ADD	11,556.07
LOT 5 BLOCK A WOODS NORTH 2 ND ADD	11,556.07
LOT 6 BLOCK A WOODS NORTH 2 ND ADD	11,556.07
LOT 7 BLOCK A WOODS NORTH 2 ND ADD	11,556.07
LOT 8 BLOCK A WOODS NORTH 2 ND ADD	11,556.07
LOT 9 BLOCK A WOODS NORTH 2 ND ADD	11,556.07
LOT 10 BLOCK A WOODS NORTH 2 ND ADD	11,556.07
LOT 11 BLOCK A WOODS NORTH 2 ND ADD	11,556.07
LOT 12 BLOCK A WOODS NORTH 2 ND ADD	11,556.07
LOT 13 BLOCK A	11,556.07

WOODS NORTH 2 ND ADD	
LOT 14 BLOCK A WOODS NORTH 2 ND ADD	11,556.07
LOT 15 BLOCK A WOODS NORTH 2 ND ADD	11,556.07
LOT 21 BLOCK A WOODS NORTH ADD	8,782.61
LOT 22 BLOCK A WOODS NORTH ADD	8,782.61
LOT 23 BLOCK A WOODS NORTH ADD	8,782.61
LOT 24 BLOCK A WOODS NORTH ADD	8,782.61
LOT 25 BLOCK A WOODS NORTH ADD	8,782.61
LOT 26 BLOCK A WOODS NORTH ADD	8,782.61
LOT 27 BLOCK A WOODS NORTH ADD	8,782.61
LOT 28 BLOCK A WOODS NORTH ADD	8,782.61
LOT 29 BLOCK A WOODS NORTH ADD	8,782.61
LOT 1 BLOCK B WOODS NORTH 2 ND ADD	11,556.07
LOT 2 BLOCK B WOODS NORTH 2 ND ADD	11,556.07

LOT 3 BLOCK B WOODS NORTH 2 ND ADD	11,556.07
LOT 4 BLOCK B WOODS NORTH 2 ND ADD	11,555.99
LOT 1 BLOCK C WOODS NORTH ADD	8,782.61
LOT 2 BLOCK C WOODS NORTH ADD	8,782.61
LOT 3 BLOCK C WOODS NORTH ADD	8,782.61
LOT 4 BLOCK C WOODS NORTH ADD	8,782.61
LOT 5 BLOCK C WOODS NORTH ADD	8,782.61
LOT 6 BLOCK C WOODS NORTH ADD	8,782.61
LOT 7 BLOCK C WOODS NORTH ADD	8,782.61
LOT 8 BLOCK C WOODS NORTH ADD	8,782.61
LOT 1 BLOCK D WOODS NORTH ADD	8,782.61
LOT 2 BLOCK D WOODS NORTH ADD	8,782.61
LOT 3 BLOCK D WOODS NORTH ADD	8,782.61
LOT 4 BLOCK D	8,782.61

WOODS NORTH ADD	
LOT 5 BLOCK D WOODS NORTH ADD	8,782.61
LOT 6 BLOCK D WOODS NORTH ADD	8,782.61
LOT 7 BLOCK D WOODS NORTH ADD	8,782.61
LOT 8 BLOCK D WOODS NORTH ADD	8,782.61
LOT 9 BLOCK D WOODS NORTH ADD	8,782.61
LOT 10 BLOCK D WOODS NORTH ADD	8,782.61
LOT 11 BLOCK D WOODS NORTH ADD	8,782.61
LOT 12 BLOCK D WOODS NORTH ADD	8,782.61
LOT 13 BLOCK D WOODS NORTH ADD	8,782.61
LOT 14 BLOCK D WOODS NORTH ADD	8,782.61
LOT 15 BLOCK D WOODS NORTH ADD	8,782.61
LOT 16 BLOCK D WOODS NORTH ADD	8,782.61
LOT 17 BLOCK D WOODS NORTH ADD	8,782.61

LOT 18 BLOCK D WOODS NORTH ADD	8,782.61
LOT 19 BLOCK D WOODS NORTH ADD	8,782.61
LOT 20 BLOCK D WOODS NORTH ADD	8,782.61
LOT 21 BLOCK D WOODS NORTH ADD	8,782.61
LOT 22 BLOCK D WOODS NORTH ADD	8,782.61
LOT 23 BLOCK D WOODS NORTH ADD	8,782.61
LOT 24 BLOCK D WOODS NORTH ADD	8,782.61
LOT 25 BLOCK D WOODS NORTH ADD	8,782.61
LOT 26 BLOCK D WOODS NORTH ADD	8,782.61
LOT 27 BLOCK D WOODS NORTH ADD	8,782.52
PROJECT 472 84651	606,000.00

SECTION 3. SECTION 1 OF ORDINANCE 48-537 as it formerly existed is hereby repealed.

SECTION 4. This ordinance shall take effect and be in force as of and on **November 5, 2010** after its passage and publication once in the official city paper and shall be recorded with the Register of Deeds of Sedgwick County, Kansas.

ADOPTED at Wichita, Kansas on **November 2, 2010.**

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk
(seal)

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

ORDINANCE NO. 48-887

AN ORDINANCE AMENDING ORDINANCE NO. 48-538 AND RESOLUTION NO. 08-458 OF THE CITY OF WICHITA, KANSAS, FOR THE PURPOSE OF PAYING A PORTION OF THE COST OF **CONSTRUCTING PAVEMENT ON 127TH STREET EAST, TO SERVE WOODS NORTH ADDITION, (Project no. 490-214/472-84653)**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The last sentence of Section 5 of Resolution 08-458, adopted on September 16, 2008, is hereby amended to read as follows:

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements; provided, however Lots 1 through 15, Block A, and Lots 1 through 4, Block B, Woods North 2nd Addition, which were replatted after the improvement district was created, shall each be assessed 1/19 of the total cost apportioned to the property described above.

SECTION 2. SECTION 1 OF ORDINANCE 48-538 is hereby amended to read as follows. Special assessments to pay the cost of said improvement as authorized by **Resolution No. 08-067**, rescinded by **08-458**, adopted **February 5, 2008, September 16, 2008**, and published **February 9, 2008, September 19, 2008**, and amended by this Ordinance be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessment for said improvement as follows:

LEGAL OF PARCEL IN BENEFIT DISTRICT	ASSESSMENT
LOT 1 BLOCK A WOODS NORTH 2 ND ADD	561.25
LOT 2 BLOCK A WOODS NORTH 2 ND ADD	561.25
LOT 3 BLOCK A WOODS NORTH 2 ND ADD	561.25
LOT 4 BLOCK A WOODS NORTH 2 ND ADD	561.25
LOT 5 BLOCK A WOODS NORTH 2 ND ADD	561.25
LOT 6 BLOCK A WOODS NORTH 2 ND ADD	561.25
LOT 7 BLOCK A WOODS NORTH 2 ND ADD	561.25
LOT 8 BLOCK A WOODS NORTH 2 ND ADD	561.25
LOT 9 BLOCK A WOODS NORTH 2 ND ADD	561.25
LOT 10 BLOCK A WOODS NORTH 2 ND ADD	561.25
LOT 11 BLOCK A WOODS NORTH 2 ND ADD	561.25
LOT 12 BLOCK A WOODS NORTH 2 ND ADD	561.25
LOT 13 BLOCK A	561.25

WOODS NORTH 2 ND ADD	
LOT 14 BLOCK A WOODS NORTH 2 ND ADD	561.25
LOT 15 BLOCK A WOODS NORTH 2 ND ADD	561.25
LOT 21 BLOCK A WOODS NORTH ADD	426.55
LOT 22 BLOCK A WOODS NORTH ADD	426.55
LOT 23 BLOCK A WOODS NORTH ADD	426.55
LOT 24 BLOCK A WOODS NORTH ADD	426.55
LOT 25 BLOCK A WOODS NORTH ADD	426.55
LOT 26 BLOCK A WOODS NORTH ADD	426.55
LOT 27 BLOCK A WOODS NORTH ADD	426.55
LOT 28 BLOCK A WOODS NORTH ADD	426.55
LOT 29 BLOCK A WOODS NORTH ADD	426.55
LOT 30 BLOCK A WOODS NORTH ADD	426.55
LOT 31 BLOCK A WOODS NORTH ADD	426.55

LOT 32 BLOCK A WOODS NORTH ADD	426.55
LOT 33 BLOCK A WOODS NORTH ADD	426.55
LOT 34 BLOCK A WOODS NORTH ADD	426.55
LOT 35 BLOCK A WOODS NORTH ADD	426.55
LOT 36 BLOCK A WOODS NORTH ADD	426.55
LOT 37 BLOCK A WOODS NORTH ADD	426.55
LOT 38 BLOCK A WOODS NORTH ADD	426.55
LOT 39 BLOCK A WOODS NORTH ADD	426.55
LOT 40 BLOCK A WOODS NORTH ADD	426.55
LOT 41 BLOCK A WOODS NORTH ADD	426.55
LOT 42 BLOCK A WOODS NORTH ADD	426.55
LOT 43 BLOCK A WOODS NORTH ADD	426.55
LOT 44 BLOCK A WOODS NORTH ADD	426.55
LOT 45 BLOCK A	426.55

WOODS NORTH ADD	
LOT 46 BLOCK A WOODS NORTH ADD	426.55
LOT 1 BLOCK B WOODS NORTH 2 ND ADD	561.25
LOT 2 BLOCK B WOODS NORTH 2 ND ADD	561.25
LOT 3 BLOCK B WOODS NORTH 2 ND ADD	561.25
LOT 4 BLOCK B WOODS NORTH 2 ND ADD	561.25
LOT 1 BLOCK C WOODS NORTH ADD	426.55
LOT 2 BLOCK C WOODS NORTH ADD	426.55
LOT 3 BLOCK C WOODS NORTH ADD	426.55
LOT 4 BLOCK C WOODS NORTH ADD	426.55
LOT 5 BLOCK C WOODS NORTH ADD	426.55
LOT 6 BLOCK C WOODS NORTH ADD	426.55
LOT 7 BLOCK C WOODS NORTH ADD	426.55
LOT 8 BLOCK C WOODS NORTH ADD	426.55

LOT 1 BLOCK D WOODS NORTH ADD	426.55
LOT 2 BLOCK D WOODS NORTH ADD	426.55
LOT 3 BLOCK D WOODS NORTH ADD	426.55
LOT 4 BLOCK D WOODS NORTH ADD	426.55
LOT 5 BLOCK D WOODS NORTH ADD	426.55
LOT 6 BLOCK D WOODS NORTH ADD	426.55
LOT 7 BLOCK D WOODS NORTH ADD	426.55
LOT 8 BLOCK D WOODS NORTH ADD	426.55
LOT 9 BLOCK D WOODS NORTH ADD	426.55
LOT 10 BLOCK D WOODS NORTH ADD	426.55
LOT 11 BLOCK D WOODS NORTH ADD	426.55
LOT 12 BLOCK D WOODS NORTH ADD	426.55
LOT 13 BLOCK D WOODS NORTH ADD	426.55
LOT 14 BLOCK D	426.55

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LOT 15 BLOCK D WOODS NORTH ADD	426.55
LOT 16 BLOCK D WOODS NORTH ADD	426.55
LOT 17 BLOCK D WOODS NORTH ADD	426.55
LOT 18 BLOCK D WOODS NORTH ADD	426.55
LOT 19 BLOCK D WOODS NORTH ADD	426.55
LOT 20 BLOCK D WOODS NORTH ADD	426.55
LOT 21 BLOCK D WOODS NORTH ADD	426.55
LOT 22 BLOCK D WOODS NORTH ADD	426.55
LOT 23 BLOCK D WOODS NORTH ADD	426.55
LOT 24 BLOCK D WOODS NORTH ADD	426.55
LOT 25 BLOCK D WOODS NORTH ADD	426.55
LOT 26 BLOCK D WOODS NORTH ADD	426.55
LOT 27 BLOCK D WOODS NORTH ADD	426.55

LOT 28 BLOCK D WOODS NORTH ADD	426.55
LOT 29 BLOCK D WOODS NORTH ADD	426.55
LOT 30 BLOCK D WOODS NORTH ADD	426.55
LOT 31 BLOCK D WOODS NORTH ADD	426.55
LOT 32 BLOCK D WOODS NORTH ADD	426.55
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LOT 34 BLOCK D WOODS NORTH ADD	426.55
LOT 35 BLOCK D WOODS NORTH ADD	426.55
LOT 36 BLOCK D WOODS NORTH ADD	426.55
LOT 37 BLOCK D WOODS NORTH ADD	426.55
LOT 38 BLOCK D WOODS NORTH ADD	426.55
LOT 39 BLOCK D WOODS NORTH ADD	426.55
LOT 40 BLOCK D WOODS NORTH ADD	426.55
LOT 41 BLOCK D	426.55

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LOT 42 BLOCK D WOODS NORTH ADD	426.55
LOT 43 BLOCK D WOODS NORTH ADD	426.55
LOT 44 BLOCK D WOODS NORTH ADD	426.55
LOT 45 BLOCK D WOODS NORTH ADD	426.55
LOT 46 BLOCK D WOODS NORTH ADD	426.55
LOT 47 BLOCK D WOODS NORTH ADD	426.55
LOT 48 BLOCK D WOODS NORTH ADD	426.55
LOT 49 BLOCK D WOODS NORTH ADD	426.55
LOT 50 BLOCK D WOODS NORTH ADD	426.55
LOT 51 BLOCK D WOODS NORTH ADD	426.55
LOT 52 BLOCK D WOODS NORTH ADD	426.55
LOT 53 BLOCK D WOODS NORTH ADD	426.55
LOT 54 BLOCK D WOODS NORTH ADD	426.55

LOT 55 BLOCK D WOODS NORTH ADD	426.55
LOT 56 BLOCK D WOODS NORTH ADD	426.55
LOT 57 BLOCK D WOODS NORTH ADD	426.55
LOT 58 BLOCK D WOODS NORTH ADD	426.55
LOT 59 BLOCK D WOODS NORTH ADD	426.55
LOT 60 BLOCK D WOODS NORTH ADD	426.55
LOT 61 BLOCK D WOODS NORTH ADD	426.55
LOT 62 BLOCK D WOODS NORTH ADD	426.55
LOT 63 BLOCK D WOODS NORTH ADD	426.55
LOT 64 BLOCK D WOODS NORTH ADD	426.55
LOT 65 BLOCK D WOODS NORTH ADD	426.55
LOT 66 BLOCK D WOODS NORTH ADD	426.55
LOT 67 BLOCK D WOODS NORTH ADD	426.55
LOT 68 BLOCK D	426.55

WOODS NORTH ADD	
LOT 69 BLOCK D WOODS NORTH ADD	426.55
LOT 70 BLOCK D WOODS NORTH ADD	426.55
LOT 71 BLOCK D WOODS NORTH ADD	426.55
LOT 72 BLOCK D WOODS NORTH ADD	426.55
LOT 73 BLOCK D WOODS NORTH ADD	426.55
LOT 74 BLOCK D WOODS NORTH ADD	426.55
LOT 75 BLOCK D WOODS NORTH ADD	426.55
LOT 76 BLOCK D WOODS NORTH ADD	426.55
LOT 77 BLOCK D WOODS NORTH ADD	426.55
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LOT 79 BLOCK D WOODS NORTH ADD	426.55
LOT 80 BLOCK D WOODS NORTH ADD	426.55
LOT 81 BLOCK D WOODS NORTH ADD	426.55

LOT 82 BLOCK D WOODS NORTH ADD	426.55
LOT 83 BLOCK D WOODS NORTH ADD	426.55
LOT 84 BLOCK D WOODS NORTH ADD	426.55
LOT 85 BLOCK D WOODS NORTH ADD	426.55
LOT 86 BLOCK D WOODS NORTH ADD	426.55
LOT 87 BLOCK D WOODS NORTH ADD	426.55
LOT 88 BLOCK D WOODS NORTH ADD	426.55
LOT 89 BLOCK D WOODS NORTH ADD	426.55
LOT 90 BLOCK D WOODS NORTH ADD	426.55
LOT 91 BLOCK D WOODS NORTH ADD	426.55
LOT 92 BLOCK D WOODS NORTH ADD	426.55
LOT 1 BLOCK E WOODS NORTH ADD	426.55
LOT 2 BLOCK E WOODS NORTH ADD	426.55
LOT 3 BLOCK E	426.55

WOODS NORTH ADD	
LOT 4 BLOCK E WOODS NORTH ADD	426.55
LOT 5 BLOCK E WOODS NORTH ADD	426.55
LOT 6 BLOCK E WOODS NORTH ADD	426.55
LOT 7 BLOCK E WOODS NORTH ADD	426.55
LOT 8 BLOCK E WOODS NORTH ADD	426.55
LOT 9 BLOCK E WOODS NORTH ADD	426.55
LOT 10 BLOCK E WOODS NORTH ADD	426.55
LOT 11 BLOCK E WOODS NORTH ADD	426.55
LOT 12 BLOCK E WOODS NORTH ADD	426.55
LOT 13 BLOCK E WOODS NORTH ADD	426.55
LOT 14 BLOCK E WOODS NORTH ADD	426.55
LOT 1 BLOCK F WOODS NORTH ADD	426.55
LOT 2 BLOCK F WOODS NORTH ADD	426.55

LOT 3 BLOCK F WOODS NORTH ADD	426.55
LOT 4 BLOCK F WOODS NORTH ADD	426.55
LOT 5 BLOCK F WOODS NORTH ADD	426.55
LOT 6 BLOCK F WOODS NORTH ADD	426.55
LOT 7 BLOCK F WOODS NORTH ADD	426.55
LOT 8 BLOCK F WOODS NORTH ADD	426.55
LOT 9 BLOCK F WOODS NORTH ADD	426.55
LOT 10 BLOCK F WOODS NORTH ADD	426.55
LOT 11 BLOCK F WOODS NORTH ADD	426.55
LOT 12 BLOCK F WOODS NORTH ADD	427.20
PROJECT 472 84653	75,500.00

SECTION 3. SECTION 1 OF ORDINANCE 48-538 as it formerly existed is hereby repealed.

SECTION 4. This ordinance shall take effect and be in force as of and on **November 5, 2010** after its passage and publication once in the official city paper and shall be recorded with the Register of Deeds of Sedgwick County, Kansas.

ADOPTED at Wichita, Kansas on **November 2, 2010.**

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk
(seal)

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

AGREEMENT
BY AND BETWEEN

THE CITY OF WICHITA, KANSAS
Party of the First Part

And
Firethorne, LLC,
Paul Gray Homes, LLC, and
Robl Construction, Inc.

Parties of the Second Part

WHEREAS, Party of the First Part has constructed certain municipal Improvements in the area west of 127th St. E., and north of Woodspring, within the City Limits of the City of Wichita; and

WHEREAS, Parties of the Second Part have replatted said lots; and

WHEREAS, Parties of the Second Part are the landowners of all or part of the improvement district; and desires that a reassessment be made; and

WHEREAS, Party of the First Part and Parties of the Second Part are both desirous of accomplishing such a reassessment.

Now, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

1. Lots 1 through 20, Block A, (Key No. C-63141 through C-63160) and Lots 1 through 5, Block B, (Key No. C-63187 through C-63191), Woods North Addition, Wichita, Sedgwick County, Kansas, were part of the improvement district for the following City Projects:

Lateral 1, Main 26, FMC Lateral Sanitary Sewer Improvements
Project No. 468-84485

Street Improvements
Project No. 472-84651

Street Improvements (127th St. E.)
Project No. 472-84653

Water Main Improvements
Project No. 448-90363

2. The Parties agree to make a reassessment for said project in the following manner:

Lots 1 through 15, Block A, and Lots 1 through 4, Block B, Woods North 2nd Addition, Wichita, Sedgwick County, Kansas, shall each pay 1/19 of the total cost apportioned to the property described above.

3. The Parties of the Second Part are the owners of the property described in Section One above and said Parties of the Second Part hereby waive the notice and hearing requirements of K.S.A. 12-6a12 (b) with respect to the reassessment herein described.

4. The Parties of the Second Part further waive their rights to appeal the special assessments for the above mentioned projects (including the described reassessment) and agree that no suit to set aside said assessment shall be brought by them nor shall they in any other way bring an action to question the validity of the proceedings taken by the Party of the First Part in levying the special assessments therefore.

5. The Parties of the Second Part further agree that they will indemnify the Party of the First Part against any and all costs, expenses, claims and adjustments for which the Party of the First Part is held responsible or which are entered against the Party of the First Part arising out as a result of the reassessment herein described.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement the _____ day of _____, 2010.

The City of Wichita, Kansas

By: _____
Carl Brewer, Mayor
Party of the First Part

Approved as to form:

Attest:

Mary E. Rebenberg
Director of Law

City Clerk

STATE OF KANSAS)
SEDGWICK COUNTY) SS:

BE IT REMEMBERED, that on this _____ day of _____, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Carl Brewer, as Mayor of The City of Wichita, a Municipal Corporation, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged to me the execution of the same, for and on behalf, and as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Notary Public

My Appointment Expires: _____

Parties of the Second Part:

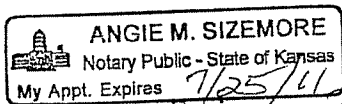
Firethorne, LLC
By: Ritchie Development Corporation,
Managing Member

By: [Signature]
Kevin Mullen, President

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 6th day of October, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Kevin Mullen as President of Ritchie Development Corporation, Managing Member of Firethorne, LLC, a Kansas limited liability company, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.



(My Appointment Expires: 7/25/11)

[Signature]
Notary Public

Parties of the Second Part:

Paul Gray Homes, LLC

By: _____

Paul Gray, President

STATE OF KANSAS)
COUNTY OF SEDGWICK)

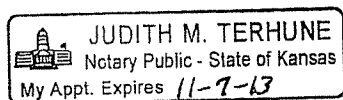
SS:

BE IT REMEMBERED, that on this 7th day of October, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Paul Gray as President of Paul Gray Homes, LLC, a Kansas limited liability company, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

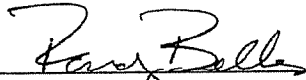
Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-13)



Parties of the Second Part:

Robl Construction, Inc.

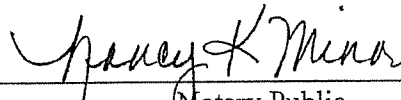
By: 
Randy Belles, Manager of Operations and as
Authorized Signatory

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 27th day of July, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Randy Belles, Manager of Operations and as Authorized Signatory of Robl Construction, Inc., a Kansas Corporation, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

(My Appointment Expires: 12/12/10)


Notary Public

Notary Public State of Kansas
Nancy K Minor
My Appt Exp 12/12/10

Agenda Item No. XII-13

**City of Wichita
City Council Meeting
October 26, 2010**

TO: Mayor and City Council

SUBJECT: Agreement to Respread Assessments: Woods North Addition and Woods North 2nd Addition (District II)

INITIATED BY: Department of Finance

AGENDA: Consent

Recommendation: Approve the Agreement and amending ordinance.

Background: The landowners, Firethorne, LLC, Paul Gray Homes, LLC, and Robl Construction, Inc. have submitted an Agreement to respread special assessments within Woods North Addition and Woods North 2nd Addition. Bond Counsel determined that the appropriate procedure to accommodate the request is by amending the ordinance.

Analysis: The land was originally included in improvement districts for Storm Water Drain Improvements. Without the Respread Agreement and amending ordinance, the assessments will be spread on a square foot basis.

Financial Considerations: There is no cost to the City.

Goal Impact: The City of Wichita aggressively uses special assessments to lower the cost of residential developments. In doing so, the City's program satisfies the City Council's goal to promote Economic Vitality and Affordable Living. The program supports this goal through partnering with stakeholders in the development community and sustains affordable living by lowering the costs of commercial property development.

Legal Considerations: The Agreement and amending ordinance have been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the Agreement and amending ordinance and authorize the necessary signatures.

Attachments: One original and 10 copies of the Respread Agreement and amending ordinance.

ORDINANCE NO. 48-888

AN ORDINANCE AMENDING ORDINANCE NO. 48-494 AND RESOLUTION NO. 08-063 OF THE CITY OF WICHITA, KANSAS, FOR THE PURPOSE OF PAYING A PORTION OF THE COST OF **CONSTRUCTION OF SWD NO. 346, TO SERVE WOODS NORTH ADDITION- GREENWICH BUSINESS PARK ADDITION, South of 29th Street North, West of 127th Street East (Project no. 468-84487/485-358)**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The last sentence of Section 4 of Resolution 08-063, adopted on February 5, 2008, is hereby amended to read as follows:

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis; provided, however Lots 1 through 15, Block A and Lots 1 through 4, Block B, Woods North 2nd Addition, which were replatted after the improvement district was created, shall each be assessed 1/235 of the total cost apportioned to the property described above: and Lots 30 through 46, Block A, Lots 28 through 34, Block D, Lots 60 through 71, Block D, Lots 9 through 14, Block E, and Lots 1 through 12, Block F, Woods North Addition which were replatted after the improvement district was created, shall each be assessed 4/235 of the total cost apportioned to the property described above.

SECTION 2. SECTION 1 OF ORDINANCE 48-494 is hereby amended to read as follows. Special assessments to pay the cost of said improvement as authorized by **Resolution No. 08-063**, adopted **February 5, 2008**, and published **February 9, 2008** and amended by this Ordinance be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessment for said improvement as follows:

LEGAL OF PARCEL IN BENEFIT DISTRICT	ASSESSMENT
LOT 3 BLOCK 2 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 4 BLOCK 2 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 1 BLOCK 3 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 2 BLOCK 3 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 3 BLOCK 3 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 4 BLOCK 3 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 5 BLOCK 3 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 6 BLOCK 3 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 7 BLOCK 3 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 8 BLOCK 3 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 9 BLOCK 3 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 10 BLOCK 3 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 11 BLOCK 3	1,424.02

GREENWICH BUSINESS CENTER ADD	
LOT 12 BLOCK 3 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 13 BLOCK 3 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 14 BLOCK 3 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 15 BLOCK 3 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 1 BLOCK 4 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 2 BLOCK 4 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 3 BLOCK 4 GREENWICH BUSINESS CENTER ADD	1,424.02
LOT 1 BLOCK A WOODS NORTH 2 ND ADD	1,914.86
LOT 2 BLOCK A WOODS NORTH 2 ND ADD	1,914.86
LOT 3 BLOCK A WOODS NORTH 2 ND ADD	1,914.86
LOT 4 BLOCK A WOODS NORTH 2 ND ADD	1,914.86
LOT 5 BLOCK A WOODS NORTH 2 ND ADD	1,914.86
LOT 6 BLOCK A WOODS NORTH 2 ND ADD	1,914.86

LOT 7 BLOCK A WOODS NORTH 2 ND ADD	1,914.86
LOT 8 BLOCK A WOODS NORTH 2 ND ADD	1,914.86
LOT 9 BLOCK A WOODS NORTH 2 ND ADD	1,914.86
LOT 10 BLOCK A WOODS NORTH 2 ND ADD	1,914.86
LOT 11 BLOCK A WOODS NORTH 2 ND ADD	1,914.86
LOT 12 BLOCK A WOODS NORTH 2 ND ADD	1,914.86
LOT 13 BLOCK A WOODS NORTH 2 ND ADD	1,914.86
LOT 14 BLOCK A WOODS NORTH 2 ND ADD	1,914.86
LOT 15 BLOCK A WOODS NORTH 2 ND ADD	1,914.86
LOT 21 BLOCK A WOODS NORTH ADD	5,696.09
LOT 22 BLOCK A WOODS NORTH ADD	5,696.09
LOT 23 BLOCK A WOODS NORTH ADD	5,696.09
LOT 24 BLOCK A WOODS NORTH ADD	5,696.09
LOT 25 BLOCK A	5,696.09

WOODS NORTH ADD	
LOT 26 BLOCK A WOODS NORTH ADD	5,696.09
LOT 27 BLOCK A WOODS NORTH ADD	5,696.09
LOT 28 BLOCK A WOODS NORTH ADD	5,696.09
LOT 29 BLOCK A WOODS NORTH ADD	5,696.09
LOT 30 BLOCK A WOODS NORTH ADD	7,659.44
LOT 31 BLOCK A WOODS NORTH ADD	7,659.44
LOT 32 BLOCK A WOODS NORTH ADD	7,659.44
LOT 33 BLOCK A WOODS NORTH ADD	7,659.44
LOT 34 BLOCK A WOODS NORTH ADD	7,659.44
LOT 35 BLOCK A WOODS NORTH ADD	7,659.44
LOT 36 BLOCK A WOODS NORTH ADD	7,659.44
LOT 37 BLOCK A WOODS NORTH ADD	7,659.44
LOT 38 BLOCK A WOODS NORTH ADD	7,659.44

LOT 39 BLOCK A WOODS NORTH ADD	7,659.44
LOT 40 BLOCK A WOODS NORTH ADD	7,659.44
LOT 41 BLOCK A WOODS NORTH ADD	7,659.44
LOT 42 BLOCK A WOODS NORTH ADD	7,659.44
LOT 43 BLOCK A WOODS NORTH ADD	7,659.44
LOT 44 BLOCK A WOODS NORTH ADD	7,659.44
LOT 45 BLOCK A WOODS NORTH ADD	7,659.44
LOT 46 BLOCK A WOODS NORTH ADD	7,659.44
LOT 1 BLOCK B WOODS NORTH 2 ND ADD	1,914.86
LOT 2 BLOCK B WOODS NORTH 2 ND ADD	1,914.86
LOT 3 BLOCK B WOODS NORTH 2 ND ADD	1,914.86
LOT 4 BLOCK B WOODS NORTH 2 ND ADD	1,914.86
LOT 1 BLOCK C WOODS NORTH ADD	5,696.09
LOT 2 BLOCK C	5,696.09

WOODS NORTH ADD	
LOT 3 BLOCK C WOODS NORTH ADD	5,696.09
LOT 4 BLOCK C WOODS NORTH ADD	5,696.09
LOT 5 BLOCK C WOODS NORTH ADD	5,696.09
LOT 6 BLOCK C WOODS NORTH ADD	5,696.09
LOT 7 BLOCK C WOODS NORTH ADD	5,696.09
LOT 8 BLOCK C WOODS NORTH ADD	5,696.09
LOT 1 BLOCK D WOODS NORTH ADD	5,696.09
LOT 2 BLOCK D WOODS NORTH ADD	5,696.09
LOT 3 BLOCK D WOODS NORTH ADD	5,696.09
LOT 4 BLOCK D WOODS NORTH ADD	5,696.09
LOT 5 BLOCK D WOODS NORTH ADD	5,696.09
LOT 6 BLOCK D WOODS NORTH ADD	5,696.09
LOT 7 BLOCK D WOODS NORTH ADD	5,696.09

LOT 8 BLOCK D WOODS NORTH ADD	5,696.09
LOT 9 BLOCK D WOODS NORTH ADD	5,696.09
LOT 10 BLOCK D WOODS NORTH ADD	5,696.09
LOT 11 BLOCK D WOODS NORTH ADD	5,696.09
LOT 12 BLOCK D WOODS NORTH ADD	5,696.09
LOT 13 BLOCK D WOODS NORTH ADD	5,696.09
LOT 14 BLOCK D WOODS NORTH ADD	5,696.09
LOT 15 BLOCK D WOODS NORTH ADD	5,696.09
LOT 16 BLOCK D WOODS NORTH ADD	5,696.09
LOT 17 BLOCK D WOODS NORTH ADD	5,696.09
LOT 18 BLOCK D WOODS NORTH ADD	5,696.09
LOT 19 BLOCK D WOODS NORTH ADD	5,696.09
LOT 20 BLOCK D WOODS NORTH ADD	5,696.09
LOT 21 BLOCK D	5,696.09

WOODS NORTH ADD	
LOT 22 BLOCK D WOODS NORTH ADD	5,696.09
LOT 23 BLOCK D WOODS NORTH ADD	5,696.09
LOT 24 BLOCK D WOODS NORTH ADD	5,696.09
LOT 25 BLOCK D WOODS NORTH ADD	5,696.09
LOT 26 BLOCK D WOODS NORTH ADD	5,696.09
LOT 27 BLOCK D WOODS NORTH ADD	5,696.09
LOT 28 BLOCK D WOODS NORTH ADD	7,659.44
LOT 29 BLOCK D WOODS NORTH ADD	7,659.44
LOT 30 BLOCK D WOODS NORTH ADD	7,659.44
LOT 31 BLOCK D WOODS NORTH ADD	7,659.44
LOT 32 BLOCK D WOODS NORTH ADD	7,659.44
LOT 33 BLOCK D WOODS NORTH ADD	7,659.44
LOT 34 BLOCK D WOODS NORTH ADD	7,659.44

LOT 60 BLOCK D WOODS NORTH ADD	7,659.44
LOT 61 BLOCK D WOODS NORTH ADD	7,659.44
LOT 62 BLOCK D WOODS NORTH ADD	7,659.44
LOT 63 BLOCK D WOODS NORTH ADD	7,659.44
LOT 64 BLOCK D WOODS NORTH ADD	7,659.44
LOT 65 BLOCK D WOODS NORTH ADD	7,659.44
LOT 66 BLOCK D WOODS NORTH ADD	7,659.44
LOT 67 BLOCK D WOODS NORTH ADD	7,659.44
LOT 68 BLOCK D WOODS NORTH ADD	7,659.44
LOT 69 BLOCK D WOODS NORTH ADD	7,659.44
LOT 70 BLOCK D WOODS NORTH ADD	7,659.44
LOT 71 BLOCK D WOODS NORTH ADD	7,659.44
LOT 9 BLOCK E WOODS NORTH ADD	7,659.44
LOT 10 BLOCK E	7,659.44

WOODS NORTH ADD	
LOT 11 BLOCK E WOODS NORTH ADD	7,659.44
LOT 12 BLOCK E WOODS NORTH ADD	7,659.44
LOT 13 BLOCK E WOODS NORTH ADD	7,659.44
LOT 14 BLOCK E WOODS NORTH ADD	7,659.44
LOT 1 BLOCK F WOODS NORTH ADD	7,659.44
LOT 2 BLOCK F WOODS NORTH ADD	7,659.44
LOT 3 BLOCK F WOODS NORTH ADD	7,659.44
LOT 4 BLOCK F WOODS NORTH ADD	7,659.44
LOT 5 BLOCK F WOODS NORTH ADD	7,659.44
LOT 6 BLOCK F WOODS NORTH ADD	7,659.44
LOT 7 BLOCK F WOODS NORTH ADD	7,659.44
LOT 8 BLOCK F WOODS NORTH ADD	7,659.44
LOT 9 BLOCK F WOODS NORTH ADD	7,659.44

LOT 10 BLOCK F WOODS NORTH ADD	7,659.44
LOT 11 BLOCK F WOODS NORTH ADD	7,659.44
LOT 12 BLOCK F WOODS NORTH ADD	7,658.98
PROJECT 468 84487	729,100.00

SECTION 3. SECTION 1 OF ORDINANCE 48-494 as it formerly existed is hereby repealed.

SECTION 4. This ordinance shall take effect and be in force as of and on **November 5, 2010** after its passage and publication once in the official city paper and shall be recorded with the Register of Deeds of Sedgwick County, Kansas.

ADOPTED at Wichita, Kansas on **November 2, 2010**.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk
(seal)

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

AGREEMENT
BY AND BETWEEN

THE CITY OF WICHITA, KANSAS
Party of the First Part

And
Firethorne, LLC,
Paul Gray Homes, LLC, and
Robl Construction, Inc.

Parties of the Second Part

WHEREAS, Party of the First Part has constructed certain municipal Improvements in the area west of 127th St. E., and south of 29th St. N., within the City Limits of the City of Wichita; and

WHEREAS, Parties of the Second Part have replatted a portion of said lots into Woods North 2nd Addition; and

WHEREAS, Parties of the Second Part are the landowners of all or part of the improvement district; and desires that a reassessment be made; and

WHEREAS, Party of the First Part and Parties of the Second Part are both desirous of accomplishing such a reassessment.

Now, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

1. Lots 1 through 20, Block A, (Key No. C-63141 through C-63160), Lots 30 through 46, Block A, (Key No. C-63170 through C-63186), Lots 1 through 5, Block B, (Key No. C-63187 through C-63191), Lots 28 through 34, Block D, (Key No. C-63227 through C-63233), Lots 60 through 71, Block D, (Key No. C-63259 through C-63270), Lots 9 through 14, Block E, (Key No. C-63300 through C-63305); and Lots 1 through 12, Block F, (Key No. C-63306 through C-63317), Woods North Addition, Wichita, Sedgwick County, Kansas, were part of the improvement district for the following City Projects:

Storm Water Drain Improvements
Project No. 468-84487

2. The Parties agree to make a reassessment for said project in the following manner:

Lots 1 through 15, Block A, and Lots 1 through 4, Block B, Woods North 2nd Addition, Wichita, Sedgwick County, Kansas, shall each pay 1/235 of the total cost apportioned to the property described above; and
Lots 30 through 46, Block A, Lots 28 through 34, Block D, Lots 60 through 71, Block D, Lots 9 through 14, Block E, and Lots 1 through 12, Block F, Woods North Addition, Wichita, Sedgwick County, Kansas, shall each pay 4/235 of the total cost apportioned to the property described above.

3. The Parties of the Second Part are the owners of the property described in Section One above and said Parties of the Second Part hereby waive the notice and hearing requirements of K.S.A. 12-6a12 (b) with respect to the reassessment herein described.

4. The Parties of the Second Part further waive their right to appeal the special assessments for the above mentioned projects (including the described reassessment) and agree that no suit to set aside said assessment shall be brought by them nor shall they in any other way bring an action to question the validity of the proceedings taken by the Party of the First Part in levying the special assessments therefore.

5. The Parties of the Second Part further agree that they will indemnify the Party of the First Part against any and all costs, expenses, claims and adjustments for which the Party of the First Part is held responsible or which are entered against the Party of the First Part arising out as a result of the reassessment herein described.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement the _____ day of _____, 2010.

The City of Wichita, Kansas

By: _____
Carl Brewer, Mayor
Party of the First Part

Approved as to form:

Attest:

Mary E. Reberdy, Esq.
Director of Law

City Clerk

STATE OF KANSAS)
SEDGWICK COUNTY) SS:

BE IT REMEMBERED, that on this _____ day of _____, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Carl Brewer, as Mayor of The City of Wichita, a Municipal Corporation, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged to me the execution of the same, for and on behalf, and as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Notary Public

My Appointment Expires: _____

Parties of the Second Part:

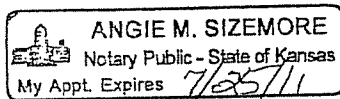
Firethorne, LLC
By: Ritchie Development Corporation,
Managing Member

By: [Signature]
Kevin Mullen, President

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 6th day of October, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Kevin Mullen as President of Ritchie Development Corporation, Managing Member of Firethorne, LLC, a Kansas limited liability company, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.




(My Appointment Expires: 7/25/10)

[Signature]
Notary Public

Parties of the Second Part:

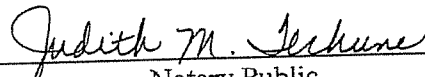
Paul Gray Homes, LLC

By: 
Paul Gray, President

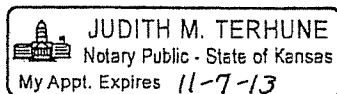
STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 7th day of October, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Paul Gray as President of Paul Gray Homes, LLC, a Kansas limited liability company, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

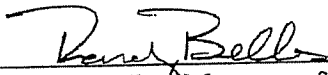

Notary Public

(My Appointment Expires: 11-7-13)



Parties of the Second Part:

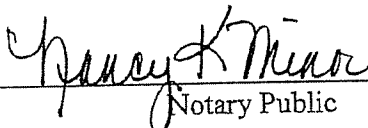
Robl Construction, Inc.

By: 
Randy Belles, Manager of Operations and as
Authorized Signatory

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 27th day of July, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Randy Belles, Manager of Operations and as Authorized Signatory of Robl Construction, Inc., a Kansas Corporation, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.


Notary Public

(My Appointment Expires: 12/12/10)

Notary Public State of Kansas
Nancy K Minor
My Appt Exp 12/12/10

City of Wichita
City Council Meeting
October 26, 2010

TO: Mayor and City Council

SUBJECT: Relocation of Pipeline in Waterfront Residential Addition
North of 13th, east of Webb. (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

.....

Recommendation: Approve the pipeline relocation payment.

Background: On June 8, 2010, the City Council approved a petition to construct a storm water sewer to serve Waterfront Residential Addition. The project required the relocation of a pipeline owned by Coffeyville Resources Crude Transportation, Inc., located in a private easement. In order to expedite the process after the petition was approved, the developer of the addition, Ritchie Associates, Inc., contracted with Coffeyville to relocate the line. Work is now completed and reimbursement of their costs will be paid from the project budget.

Analysis: The Waterfront Residential Addition is a new single-family residential development located north of 13th Street, east of Webb.

Financial Considerations: The relocation cost was \$240,035.83. Funding was included in the storm sewer petition project budget. The funding source is special assessments.

Goal Impact: The project addressed the Efficient Infrastructure goal by providing drainage improvements required for new development.

Legal Considerations: None.

Recommendation/Action: It is recommended that the City Council approve the payment to Ritchie Associates, Inc. for the relocation of the pipeline.

Attachments: Invoice from Ritchie Associates, Inc.

RITCHIE ASSOCIATES, INC.

8100 E. 22nd St. No., Bldg. 1000

Wichita, Kansas 67226

316-684-7300

DATE: September 21, 2010

Waterfront Residential Addition Gas Pipeline Easement Confinement Costs

Gas Pipeline Relocation Costs	
• HLH Construction (Pipeline Relocation)	\$131,000.00
• Coffeerville Resources (Steel Pipe)	\$15,982.65
Gas Pipeline Fees/Administration	
• Lewis Rice Fingerish	\$73,000.00
Gas Pipeline Design/Coordination	
• MKEC Engineering Consultants	\$20,053.18
Total Gas Pipeline Easement Confinement Costs	\$240,035.83

City of Wichita
City Council Meeting
October 26, 2010

TO: Mayor and City Council

SUBJECT: Security Enhancements – Water Treatment Plant (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the project.

Background: In compliance with federal law, a vulnerability assessment was conducted for Wichita Water Utilities' Water Treatment Plant, Hess Pump Station, Cheney Pump Station, Sewer Maintenance and Sewage Treatment. The assessment made specific and general recommendations as to how to reduce vulnerability to criminal and terrorist acts. A design services contract for electronic security improvements for the first phase of the design with Burns & McDonnell was approved by the City Council on August 31, 2004. Walz Harman Huffman was hired to construct the majority of the improvements. The second phase of these improvements consists of the addition of an interior wall at the Water Treatment Plant with design by McCluggage Van Sickel & Perry, the City's on-call architect/engineer.

Analysis: The Water Treatment Plant is not open to the public and all access to division employees is via card reader. Deliveries are made after visual verification by control room operators, and all other visitors to the facility must be escorted into the building. The current configuration of the facility is such that there is no separation between the office and conference area, and the "working" portion of the plant. This project will construct a wall that will isolate the conference and office area from the rest of the plant, providing an added level of security during times when visitors are allowed in the conference area. The heating, ventilation, air conditioning, and lighting systems will need to be modified as well, and a drop ceiling will need to be constructed. Some Americans with Disability Act modifications will need to be made to the restroom. Also included are outstanding electronic security improvements that could not be installed until the completion of the wall and a new generator building.

Financial Consideration: Funding is available in Capital Improvement Program W-903, Water System Security Improvements. The City Council previously authorized \$1,000,000 for security enhancements on January 8, 2002. The estimate for the current security enhancements is \$200,000, resulting in a total cost of \$1,200,000.

Goal Impact: This project addresses the Efficient Infrastructure goal by securing the existing facilities at the Water Treatment Plant.

Legal Considerations: The resolution has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the project, authorize the expenditure, adopt the resolution, and authorize the necessary signatures.

Attachments: CIP sheet, resolution and Notice of Intent.

CAPITAL IMPROVEMENT
PROJECT AUTHORIZATION
CITY OF WICHITA

USE:
 To Initiate Project _____
 To Revoke Project X

1. Prepare in triplicate.
2. Send original & 2 copies to budget.
3. City Manager to sign all copies.
4. File original w/ initiating resolution in City Clerk.
5. Return 2nd copy to initiating department.
6. Send 3rd copy to Controller.

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location	
Public Works	Water Utilities	9/15/2010	Security Enhancements-Water Treatment Plant	
5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date	
W-003		2010		
9. Estimated Start Date	10. Estimated Completion Date	11. Project Revised		
Summer 2011	late 2011			

	12. Project Cost Estimate			12A.	
ITEM	CO	SA	Water Utility	TOTAL	
Right of Way					Planting Required <input type="checkbox"/>
Planting, grading & const.					Lot Split <input type="checkbox"/>
Bridge & Culverts					Petition <input type="checkbox"/>
Drainage					Ordered by WCC <input type="checkbox"/>
Sanitary Sewer					
Sidewalks					
Water			\$300,000	\$300,000	at the Water Treatment Plant
Overway					
Totals			\$300,000	\$300,000	
Total CIP Amount Budgeted			\$200,000	\$200,000	
Total Prelim. Estimate					

13. Recommendation:

Approve the project and adopt the resolution

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

OCA:

Published in the Wichita Eagle on October 29, 2010

NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED \$1,200,000, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF.

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You and each of you are hereby notified that the Governing body of the City of Wichita, Kansas, by Resolution No. 10-277, duly adopted October 26, 2010, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not limited specifically to Security Enhancements-Water Treatment Plant (W-903) (called the "Project"). The total costs of the Project are estimated to be one million two hundred thousand dollars (\$1,200,000). The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed \$1,200,000 under the authority K.S.A. 10-1201 et seq., as amended and supplemented including by Charter Ordinance No. 211 of the City of Wichita, Kansas. Such revenue bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operation of the Water and Sewer Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the City which will be available for that purpose.

This Notice of Intent shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of revenue bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the revenue bonds is filed within fifteen (15) day period, then the Governing Body shall have the authority and proceed with the Project and the issuance of revenue bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on October 26, 2010.

/s/ CARL BREWER, Mayor

ATTEST:

/s/ Karen Sublett, City Clerk

RESOLUTION NO. 10-277

A RESOLUTION AMENDING RESOLUTION NO. 02-007 PERTAINING TO THE SECURITY ENHANCEMENTS-WATER TREATMENT PLANT (W-903) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That Section 1 of Resolution No. 02-007 is hereby amended to read as follows:

“SECTION 1. Pursuant of the laws of the State of Kansas, including K.S.A. 10-1201, et. seq. as amended and supplemented by Charter Ordinance No. 211 of the City of Wichita, Kansas, it is hereby found and determined to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Security Enhancements-Water Treatment Plant (W-903) (called the “Project”). The total costs of the Project are estimated to be \$1,200,000 exclusive of the cost of interest on borrowed money. Available and unencumbered funds of the Utility will be used to pay a portion of the costs of the Project.”

SECTION 2. That Section 3 of Resolution No. 02-007 is hereby amended to read as follows:

“SECTION 3. It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City, in a total principal amount which shall not exceed one million two hundred thousand dollars (\$1,200,000) in 2010 exclusive of the cost of interest on borrowed money, under the authority of the Act, to pay certain costs of the Project, and the expenses of issuing such revenue bonds. Such revenue bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys which will be available for that purpose.”

SECTION 3. That the original of Section 1 and 3 of Resolution No. 02-007 is hereby rescinded.

Adopted at Wichita, Kansas, October 26, 2010.

CARL BREWER, Mayor

(Seal)

ATTEST:

KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

By _____
GARY E REBENSTORF, Director of Law

**City of Wichita
City Council Meeting
October 26, 2010**

TO: Mayor and City Council

SUBJECT: Local S and E Wells (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the project.

Background: On August 31, 1993, the City Council approved the Integrated Local Water Supply Plan. The plan identified several existing and potential water resources that could be utilized to meet the City's water supply needs to the year 2050, including the existing local well field.

Analysis: The existing local well field is composed of the E-Wells and S-Wells, which are located near the Water Treatment Plant. These 17 wells, which were constructed between 1949 and 1953, have rights that allow the City to withdraw an average of 5.4 million gallons per day, and a maximum day withdrawal of 37.1 million gallons. Five of the existing S-Wells have either collapsed or are no longer able to produce water. This project would fund the re-drilling and re-equipping of five S-Wells, and the installation of monitoring wells and sensors that would enhance the operation of all of the wells and usage of the aquifer.

Financial Consideration: The estimated cost to re-drill the five wells and install sensors and monitoring equipment is estimated to be \$940,000. Funds are available in the Capital Improvement Program W-1395 Local S and E Well Repairs.

Goal Impact: This project addresses the Efficient Infrastructure goal by assisting in the maintenance of facilities needed to provide reliable, compliant and secure utilities.

Legal Considerations: The resolution has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the project, adopt the resolution, and authorize the necessary signatures.

Attachments: CIP sheet, resolution and Notice of Intent.

CAPITAL IMPROVEMENT
PROJECT AUTHORIZATION
CITY OF WICHITA

USF:
To Initiate Project ☒
To Revise Project ☐

1. Prepare in triplicate.
2. Send original & 2 copies to budget.
3. City Manager to sign all copies.
4. File original w/ initiating resolution in City Clerk.
5. Return 2nd copy to initiating department.
6. Send 3rd copy to Controller.

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location	
Public Works	Water Utilities	9/15/2010	Local S & E Well Repairs	
5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date	
W-1295		2010		
9. Estimated Start Date	10. Estimated Completion Date	11. Project Revised		
Summer 2011	1st 2011			

12. Project Cost Estimate				12A.			
ITEM	CO	SA	Water Utility	TOTAL		Yes	No
Right of Way					Planting Required		X
Drain, grading & const.					Lot Split		X
Bridge & Culverts					Petition		X
Drainage					Ordered by WCC		X
Sanitary Sewer							
Sidewalk					Remarks: This project is the first step in rehabilitation of the Local S & E Well field.		
Water			\$600,000	\$600,000	It will consist of the re-drilling and rehabilitation flow to wells. A future project will		
Overway					include re-drilling of the D-Well field, construction of new well houses and replacement of		
Totals			\$600,000	\$600,000	all existing infrastructure that supports the S & E Wells		
Total CIP Amount Budgeted			\$640,000	\$640,000			
Total Prelim. Estimate							

13. Recommendation:

Approve the project and adopt the resolution

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

OCA:

Published in the Wichita Eagle on October 29, 2010

NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED \$940,000, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF.

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You and each of you are hereby notified that the Governing body of the City of Wichita, Kansas, by Resolution No. 10-278, duly adopted October 26, 2010, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not limited specifically to Local S&E Well Field Repairs (W-1395) (called the "Project"). The total costs of the Project are estimated to be nine hundred forty thousand dollars (\$940,000). The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed \$940,000 under the authority K.S.A. 10-1201 et seq., as amended and supplemented including by Charter Ordinance No. 211 of the City of Wichita, Kansas. Such revenue bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operation of the Water and Sewer Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the City which will be available for that purpose.

This Notice of Intent shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of revenue bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the revenue bonds is filed within fifteen (15) day period, then the Governing Body shall have the authority and proceed with the Project and the issuance of revenue bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on October 26, 2010

/s/ CARL BREWER, Mayor

ATTEST:

/s/ Karen Sublett, City Clerk

RESOLUTION NO. 10-278

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, DECLARING IT NECESSARY TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY, AND TO ISSUE REVENUE BONDS IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED \$940,000 EXCLUSIVE OF THE COST OF INTEREST ON BORROWED MONEY, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH INTENTION IN THE MANNER REQUIRED BY LAW.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), has heretofore by Ordinance No. 39-888, adopted May 26, 1987 and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the "City of Wichita, Kansas Water and Sewer Utility"; and

WHEREAS, the City is authorized under the Constitution and laws of the State of Kansas, including K.S.A. 10-1201 et seq., (the "Act"), to issue revenue bonds to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility;

THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Pursuant of the laws of the State of Kansas, including K.S.A. 10-1201, et. seq. as amended and supplemented by Charter Ordinance No. 211 of the City of Wichita, Kansas, it is hereby found and determined to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not limited specifically to, Local S&E Well Field Repairs (W-1395) (the "Project"). The total costs of the Project are estimated to be nine hundred forty thousand dollars (\$940,000) in 2010 exclusive of the cost of interest on borrowed money. Available and unencumbered funds of the Utility will be used to pay a portion of the costs of the project.

SECTION 2. It is hereby found and determined that the construction of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

SECTION 3. It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City, in a total principal amount which shall not exceed nine hundred forty thousand dollars (\$940,000) in 2010, exclusive of the cost of interest on borrowed money, under the authority of the Act, to pay certain costs of the Project, and the expenses of issuing such revenue bonds. Such revenue bonds shall not be general obligation of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.

SECTION 4. It is hereby found and determined to be necessary, before such revenue bonds can be issued, to publish one time in the City's official newspaper a Notice of the Governing Body's intention to initiate and complete the Project and to issue such revenue bonds, such Notice to be in the form which is attached hereto and made a part hereof by reference as though fully set forth herein. If, within Fifteen (15) days from and after the date of the publication of the Notice, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than Twenty Percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If a sufficient protest to the Project and the issuance of revenue bonds is not filed within said Fifteen (15) day period, then the Governing

Body shall have the authority to authorize and proceed with the Project and the sale and issuance of the revenue bonds.

SECTION 5. This Resolution shall be in force and take effect from and after its adoption and approval.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, not less than two-thirds of the members voting in favor thereof, on October 26, 2010.

CARL BREWER, Mayor

(Seal)

ATTEST:

KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

By _____
GARY E. REBENSTORF, Director of Law

Second Reading Ordinances for October 26, 2010 (first read on October 19, 2010)

Midtown Neighborhood Stormwater Master Plan. (District VI)

ORDINANCE NO. 48-854

An ordinance of the city of Wichita, Kansas authorizing the issuance of its General Obligation Bonds to pay the costs of producing a Midtown Neighborhood Stormwater Master Plan.

2009 Street Rehabilitation Program. (District V)

ORDINANCE NO. 48-855

An ordinance declaring 13th street between Maize and Tyler (472-84852) to be a main trafficway within the city of Wichita, Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of same.

ZON2010-00026 – City zone change from SF-5 Single-Family Residential (“SF-5”) to TF-3 Two-Family Residential (“TF-3”); generally located north and east of the intersection of North Hoover Road and West Robinson Street. (District VI)

ORDINANCE NO. 48-856

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended.

ZON2010-00030 – City zone change from B Multi-Family Residential (“B”) to LC Limited Commercial (“LC”) for a greenhouse; generally located west of Osage Street and south of Maple Street. (District IV)

ORDINANCE NO. 48-857

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended.

ZON2010-00031 – City zone change from LI Limited Industrial to MF-18 Multi-Family Residential and LC Limited Commercial and amendment to Protective Overlay #74; generally located south of 29th Street North and one-fourth to one-half mile east of Greenwich Road. (District II)

ORDINANCE NO. 48-858

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.

Amendments to the Building Code - Title 18.50 (2006 Edition of the International Building Code); Title 18.51 (2006 Edition of the International Residential Code); and Title 18.08 (Building Permit Fee Schedule)

ORDINANCE NO. 48-879

An ordinance creating sections 18.50.315, 18.50.365, 18.50.475, 18.50.535, 18.50.585, 18.50.588, 18.50.673, 18.50.676, 18.50.685, 18.50.703, 18.50.705, 18.50.707, 18.50.735, 18.50.795, 18.50.805, 18.50.1053, 18.50.1055, 18.50.1280 and 18.50.1290, and amending sections 18.50.130, 18.50.170, 18.50.200, 18.50.290, 18.50.360, 18.50.380, 18.50.400, 18.50.690, 18.50.810, 18.50.820, 18.50.980, 18.50.990, 18.50.1050, 18.50.1110, 18.50.1180, 18.50.1200, and 18.50.1210 of title 18.50 of the code of the City of Wichita and repealing the original of the following amendment of said code; 18.50.740.

ORDINANCE NO. 48-880

An ordinance amending and repealing the original of sections: 18.51.030, 18.51.070, 18.51.150, 18.51.170, 18.51.220, 18.51.440, 18.51.510, 18.51.540, 18.51.630, 18.51.650, 18.51.700, 18.51.710, 18.51.730, 18.51.750; creating sections: 18.51.112, 18.51.115, 18.51.402, 18.51.424, 18.51.572, 18.51.602, 18.51.604, 18.51.702, 18.51.704, 18.51.706, 18.51.708, 18.51.712, 18.51.714, 18.51.715, 18.51.716, 18.51.718; and deleting section: 18.51.620, of title 18.51 of the code of the City of Wichita, Kansas.

ORDINANCE NO. 48-881

An ordinance amending section 18.08.010 of the code of the City of Wichita, Kansas, and pertaining to building permit fees of the City of Wichita, Kansas.

Ordinance Amending the Mechanical Code - Title 22 of the Code of the City of Wichita

ORDINANCE NO.48-882

An ordinance repealing the originals of sections 22.04.10 through 22.05.050 of the code of the City of Wichita, Kansas; creating sections 22.01.010, 22.01.020, 22.01.030, 22.01.040, 22.01.060, 22.01.070, 22.01.080, 22.01.090, 22.01.100, 22.01.110, 22.01.120, 22.01.130, 22.01.140, 22.01.160, 22.01.170, 22.01.180, 22.01.190, 22.01.200, 22.01.210, 22.01.220, 22.01.230, 22.01.240, 22.01.260, 22.01.270, 22.02.010, 22.02.020, 22.02.030, 22.02.040, 22.02.060, 22.02.070, 22.02.080, 22.02.090, 22.02.100, 22.02.110, 22.02.120, 22.02.130, 22.02.140, 22.02.160, 22.02.170, 22.02.180, 22.02.190, 22.02.200, 22.02.210, 22.02.220, 22.02.230, 22.02.240, 22.02.260, and 22.02.270; of the code of the City of Wichita, Kansas; all pertaining to the mechanical code of the City of Wichita, Kansas.